

IN THE COURT OF THE DISTRICT MUNSIF, VANIYAMBADI,

**Present: Thiru V.ESHWAR, B.E.,LL.B.,
DISTRICT MUNSIF, VANIYAMBADI**

Dated this the 6th day of October, 2025

I.A. No. 3 of 2024

in

O.S. No. 60 of 2017

1. Ganesan (Deceased)
2. Munisamy
3. Samraj (Deceased)
4. Krishnaveni
5. Varadharaj
6. Lalitha (Deceased)
7. Perumal (Deceased)
8. Perumalsamy (Deceased)
9. Santhamani
- 10.Kasi
- 11.Rajamani
- 12.Loganathan
- 13.Duraisamy
- 14.Dhamodiran
- 15.Bharathi
- 16.Maragatham
- 17.Amaravathi
- 18.Mani
- 19.Venkatesan
- 20.Sivakumar
- 21.Padma
- 22.Rani
- 23.Selvi
- 24.Ravi (Deceased)
- 25.Vinayagam
- 26.Sampath

27.Dhanabakiyam
 28.Jeyapal
 29.Durai
 30.Govindaraj (Deceased)
 31.Samikannu
 32.Kanna @ Kannamma
 33.Susila (Deceased)
 34.Ramakrishnan

... Petitioners/Plaintiffs

/Vs./

1. T.K. Babyammal (Deceased)
 2. The District Collector, Tirupattur District.
 3. The Tahsildar, Natrampalli Taluk.
 4. The Village Administrative Officer, Thekkupattu.
 5. The Block Development Officer, Natrampalli.
 6. The Assistant Engineer, TNEB, Ambalur.

... Respondents/Defendants

This petition having come up for final hearing before me on this day, upon hearing the arguments of the learned counsel Mr.N.K.Sathiyamurthy for the petitioners and R1 (Died) and R2-R6 the learned counsel Mr. G.Boopathi and upon perusing the petition, counter-affidavit, and all other material records filed in this case, this Court doth pass the following:

ORDER

1. This petition has been filed by the petitioners/plaintiffs under Order XXIII Rule 1(3) of the Code of Civil Procedure, 1908 (CPC), seeking

permission of this Court to withdraw the main suit, O.S. No. 60 of 2017, with liberty to institute a fresh suit on the same subject matter and for the same cause of action.

Case Overview:

2. The main suit, O.S. No. 60 of 2017, was instituted by the plaintiffs seeking to set aside a decree passed in an earlier suit, O.S. No. 609 of 1972, and for the consequential reliefs of declaration of their possessory rights over the suit property and for a permanent injunction to protect the same.

Brief Averments of the Petitioners/Plaintiffs:

3. The petitioners' case, as articulated in the petition filed by the 2nd petitioner on behalf of all others, is that during the pendency of the suit, while it was in the trial stage, several parties have passed away. Specifically, Plaintiff Nos. 1, 3, 6, 8, 24, 30, and 33, as well as the 1st Defendant, have died between 2020 and 2022. Consequently, it has become necessary to bring their respective legal representatives on record to proceed with the suit

4. The petitioners contend that the process of impleading the legal heirs will be time-consuming and will cause inordinate delay in the proceedings. It is further averred that the legal heirs of the deceased plaintiffs have moved to other towns and cities for their livelihood, making it practically difficult to contact and

implead them in a timely manner. This situation, they claim, has created a procedural complication that will prejudice the remaining plaintiffs, as the legal heirs of the deceased 1st Defendant are allegedly attempting to execute the decree in O.S. 609/1972 and disturb the plaintiffs' peaceful possession.

5. Owing to these procedural impediments, which the petitioners believe constitute sufficient grounds, they seek to withdraw the present suit and file a fresh, comprehensive suit after properly arraying all necessary parties, including the legal heirs of the deceased. They submit that failure to grant this leave would cause them irreparable loss and hardship.

Brief Counter-Averments of the Respondents/Defendants

6. Respondents 3, 5, and 6 have filed separate counters resisting the petition. Their objections are largely identical and are summarized as follows: The petition is false, not maintainable in law, and has been filed with the mala fide intention of delaying the proceedings.

7. The respondents deny all the averments made by the petitioners and put them to the strict proof of the same. They specifically challenge the petitioners to produce documentary evidence, such as death certificates, to substantiate their claims regarding the demise of the various parties.

8. It is contended that the death of parties during the pendency of a suit is not a valid legal ground for seeking withdrawal with liberty to file a fresh suit. The petitioners ought to follow the procedure mandated under Order XXII of the CPC to implead the legal representatives.

9. The respondents argue that the suit has been pending since 2017, for nearly eight years, and allowing the petitioners to withdraw and file a fresh suit at this stage would be a gross abuse of the process of the Court and would cause severe prejudice to the defendants.

10. It is further contended that the official respondents (R2 to R6) have been unnecessarily impleaded in the suit, causing wastage of public time and resources. The petition should therefore be dismissed with exemplary costs.

Arguments Advanced:

11. The Learned counsel for the petitioners argued that numerous deaths on both sides have created complex procedural hurdles, making it difficult to proceed. It was argued that since the plaintiff is the *dominus litus*, and to avoid future complications, the Court should exercise its discretion and grant liberty to file a fresh suit.

12. The learned Government Pleader, appearing for the official respondents, countered that the death of parties is not a procedural complication

but an eventuality for which the CPC provides a clear remedy under Order XXII. It was argued that the petition is a mere tactic to overcome the petitioners' own failure to take timely steps to implead the legal heirs and that the petition should be dismissed.

Point for Determination:

13. Based on the rival contentions and arguments advanced by both sides, the sole point for determination in this petition is:

"Whether the petitioners have established the existence of a 'formal defect' or 'other sufficient grounds' as contemplated under Order XXIII Rule 1(3) of the CPC to be permitted to withdraw the suit with liberty to institute a fresh suit on the same subject matter?"

Discussion, Analysis, and Reasoning:

14. This Court has carefully considered the petition, the counters, and the arguments of the learned counsels. The relief sought by the petitioners is governed by Order XXIII Rule 1(3) of the CPC, which reads as follows:

Order XXIII, Rule 1(3): *Where the Court is satisfied,—*

(a) that a suit must fail by reason of some formal defect, or

(b) that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim."

15. The provision makes it clear that the grant of permission to withdraw with liberty is not a matter of right for the plaintiff but a matter of discretion for the Court. This discretion must be exercised judicially and only upon the satisfaction of either of the two conditions laid down in the rule.

16. The petitioners have cited the death of seven of their co-plaintiffs and the 1st defendant as the primary reason for this petition. They claim that the consequent need to implead a large number of legal representatives, some of whom are difficult to trace, constitutes a sufficient ground for granting the permission sought.

17. The question, therefore, is whether the death of a party to a suit can be construed as a "formal defect" or "other sufficient grounds" under this provision. A "formal defect" is generally understood as a defect of form or procedure which does not affect the merits of the case, such as misjoinder of parties, non-payment of proper court fees, or failure to obtain a required permission for

instituting the suit. The death of a party is a natural event that occurs during the course of litigation and is not, by itself, a defect in the frame or institution of the suit.

18. The Code of Civil Procedure anticipates the death of parties and provides a comprehensive and self-contained procedure under **Order XXII** for the substitution of legal representatives. Rules 3 and 4 of Order XXII lay down the specific steps to be taken upon the death of a plaintiff or a defendant. The existence of this specific remedial procedure within the CPC strongly indicates that the death of a party is not an incurable procedural lacuna that would cause a suit to fail. Rather, it is an eventuality that must be addressed by following the prescribed procedure.

19. The petitioners' further contention—that tracing the legal heirs is difficult as they reside elsewhere —is a matter of diligence in prosecution, not a formal defect. The CPC provides various modes of service of notice under Order V, which can be employed to effect service on parties residing in different jurisdictions. To permit a plaintiff to withdraw a suit that has been pending for eight years on the ground that it is inconvenient to trace legal heirs would be to reward a lack of diligence and would open the floodgates for litigants to abandon suits at will and re-litigate the same matter, thereby causing immense prejudice to the defendants and defeating the principles of finality in litigation.

20. The expression "other sufficient grounds" in clause (b) has been judicially interpreted to be *ejusdem generis* (of the same kind) with the "formal defect" mentioned in clause (a). It must be a cause analogous to a formal defect. The inability of the petitioners to prosecute their case diligently by taking steps under Order XXII cannot be considered a ground analogous to a formal defect.

21. The argument that the plaintiff is *dominus litus* is applicable to an unconditional withdrawal under Order XXIII Rule 1(1). Once the plaintiff seeks the Court's permission for the valuable right to file a fresh suit, the absolute right ceases, and the matter falls squarely within the judicial discretion of the Court, which must be exercised based on the strict criteria laid down in sub-rule (3).

22. In the present case, the petitioners have failed to demonstrate any formal defect in the suit. The grounds cited are related to events that occurred *pendente lite*, for which the Code itself provides a clear and effective remedy. Allowing this petition would render the provisions of Order XXII otiose and would amount to permitting the plaintiffs to restart litigation from the beginning, thereby nullifying eight years of proceedings. This Court finds no bona fides in the reasons stated by the petitioners. The objections raised by the respondents are well-founded.

23. Therefore, this Court is not satisfied that the suit is bound to fail due to a formal defect or that there exist other sufficient grounds to grant the liberty

sought. The point for determination is accordingly answered in the negative and against the petitioners.

Result:

24. In the result, this Interlocutory Application is **dismissed**. The petitioners are at liberty to take appropriate and timely steps as contemplated under Order XXII of the Code of Civil Procedure, 1908, to bring the legal representatives of the deceased parties on record in O.S. No. 60 of 2017 and proceed with the suit. Considering the circumstances of this case, there is no order as to any costs.

Directly typed by me in my official laptop, corrected by me, and pronounced in open court on this day, the 6th of October, 2025.

**DISTRICT MUNSIF,
VANIYAMBADI.**

ANNEXURE:

Petitioners side Witness: Nil
Petitioners side Documents: Nil

Respondents side evidence: Nil
Respondent side Documents: Nil

**DISTRICT MUNSIF,
VANIYAMBADI.**