

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE(FTC),  
VELLORE, VELLORE DISTRICT.

PRESENT: Tmt.P.REVATHY, M.A.,M.L.,  
Additional District Judge(FTC),Vellore.

Dated this the 01<sup>st</sup> day of December 2022, Thursday.

I.A.NO.2/2022 in  
O.S.NO.17/2020

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|                          |                                |
|--------------------------|--------------------------------|
| 1. J.Gopikrishnan (Died) | ..Petitioner/Plaintiff         |
| 2. G.Umasankari          |                                |
| 3. G.Abirami             |                                |
| 4. G.Hariharan           | ..Petitioners/Proposed parties |
| /Vs/                     |                                |
| B.Lalith Singh           | ..Respondent/Defendant.        |

This petition is coming before me on 30.11.2022 for final hearing in the presence of Thiru.K.M.Boopathi and Thiru.P.Mohanavelu, Counsels for the petitioners and of Thiru.M.L.Jambukumar and Thiru.J.Dineshkumar, counsels for the respondent and upon hearing the arguments of bothsides and upon perusing the entire case records and having stood over for consideration, till this date this court delivered the following;-

**ORDER**

Petition filed by the petitioner under Or.22 Rule 9 and Sec.151 of CPC, prays to set aside the order of abetment against the 1<sup>st</sup> petitioner to implead the legal heirs 2 to 4 petitioners/2 to 4 proposed parties as 2 to 4 Plaintiffs in the main suit.

**2. Brief averments of the affidavit is as follows:-**

The 2<sup>nd</sup> petitioner herein is the 1<sup>st</sup> proposed party in the above I.A. and 3<sup>rd</sup> and 4<sup>th</sup> petitioners are her daughter and son and she filed this affidavit on behalf of other petitioners also. The 1<sup>st</sup> Plaintiff is her husband and the respondent has entered into a unregistered agreement of sale with her husband dated 17.02.2017 for a sum of Rs.40,25,000/- and the defendant has received Rs.20,00,000/- as advance on the date of agreement itself. Hence, her husband has filed the above suit for refund of Advance amount. During the pendency of the above said case, her husband namely J.Gopikrishnan died on 23.09.2020 leaving behind herself and 3 and 4<sup>th</sup> petitioners/proposed parties as his legal heirs to succeed his estates left out by the deceased and they are the only legal heirs of the deceased Plaintiff and they are entitled to get the advance amount as per the sale agreement dated 17.02.2017. The respondent is liable to execute the sale deed in favour of petitioners. Hence the petitioner filed this petition and prays to allow the petition.

**3. Brief averments of the counter filed by the respondent is as follows:-**

This petition is not maintainable either in law or on facts. All the petition averments are denied except those that are admitted by the respondent herein. The suit filed by the Plaintiff on 10.01.2020 against the defendant and he died on 23.09.2020. The petitions filed under Order 22,

Rule 3 of CPC, under Order 22 Rule 9 of CPC petition, under Section 5 of the Limitation Act on 07.03.2021 for condoning the delay of 350 days itself is wrong. Therefore correct days of delay not mentioned in the petition itself is basically wrong and liable to be dismissed. No reason given for occurring the delay in filing the L.R. petition is not mentioned in the affidavit. Section 5 of the Limitation Act says that for each and every day the delay must be explained. Therefore without given reasons for the delay in filing the petition amounts to dismiss the application.

4. The point for consideration in this petition is;

Whether the petition is to be allowed or not?

**5. Point:**

The petitioner stated that the 1<sup>st</sup> petitioner filed the above suit for specific performance of suit sale agreement and during the pendency of the above said case, the 1<sup>st</sup> petitioner died on 23.09.2020 leaving behind the 2 to 4 petitioners/proposed parties as his legal heirs to succeed his estates left out by the deceased and they are the only legal heirs of the deceased Plaintiff and they are entitled to get the advance amount as per the sale agreement dated 17.02.2017. The respondent is liable to execute the sale deed in favour of petitioners. Hence the petitioners have to be impleaded as plaintiffs 2 to 4 in the above suit after setting aside the abatement passed in filing the petition to implead the legal heirs.

But the respondent denied the allegations and stated that the correct days of delay not mentioned in the petition itself is basically wrong and liable to be dismissed. No reason given for occurring the delay in filing the L.R. petition is not mentioned in the affidavit. Section 5 of the Limitation Act says that for each and every day the delay must be explained. Therefore without given reasons for the delay in filing the petition amounts to dismiss the application.

But the petition to condone the delay of 350 days in filing the petition to implead the legal heirs of the deceased Plaintiff was allowed in I.A.No.1/2022 on 21.09.2022 on payment of cost of Rs.1000/- to the respondent counsel on similar allegations. Hence the present petition has to be allowed.

In the result, this petition is allowed. No cost.

Dictated to steno typist directly, typed by her, corrected and pronounced by me in open court, this the 01<sup>st</sup> day of December 2022.

**Additional District Judge(FTC)  
Vellore.**

**Annexure:**  
**Bothside witnesses and Exhibits:**

NIL

**ADJ(FTC),  
Vellore.**

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VELLORE, VELLORE DISTRICT.

PRESENT: Tmt.P.REVATHY, M.A.,M.L.,  
Additional District Judge(FTC),Vellore.

Dated this the 01<sup>st</sup> day of December 2022, Thursday.

I.A.NO.2/2022 in  
O.S.NO.17/2020

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1. J.Gopikrishnan (Died), aged about 54 years, S/o.S.Janarthanam, residing at D.No.4, Karar Krishnasamy Street, Kosapet, Vellore, Vellore District.  
..Petitioner/Plaintiff
2. G.Umasankari, aged about 48 years, W/o.Late.Gopikrishnan,
3. G.Abirami. aged 28 years, D/o.Late.Gopikrishnan,
4. G.Hariharan, aged 23 years, S/o.Late.Gopikrishnan,  
No.2 to 4 are residing at Gandhi Nagar, 2<sup>nd</sup> Cross East, Opposite to Village Panchayath Union Elementary School, Vasantham Illam, Ground Floor, Vellore-06.  
..Petitioners/Proposed parties

//Vs//

B.Lalith Singh, aged 57 years, S/o.Balvanth Singh, D.No.22, 8<sup>th</sup> East Main Road, Gandhi Nagar, Katpadi Taluk, Vellore-06, Vellore District.  
..Respondent/Defendant.

Petition filed by the petitioner under Or.22 Rule 9 and Sec.151 of CPC, prays to set aside the order of abetment against the 1<sup>st</sup> petitioner to implead the legal heirs 2 to 4 petitioners/2 to 4 proposed parties as 2 to 4 Plaintiffs in the main suit.

This petition is coming before me on 30.11.2022 for final hearing in the presence of Thiru.K.M.Boopathi and Thiru.P.Mohanavelu, Counsels for the petitioners and of Thiru.M.L.Jambukumar and Thiru.J.Dineshkumar, counsels for the respondent and upon hearing the arguments of bothsides and upon perusing the entire case records and having stood over for consideration, till this date, this court doth order and decreetal order as follows:-

**DECREETAL ORDER**

1. That the petition be and the same is hereby allowed;
2. That there is no cost.

Given under my hand and the seal of this court, on this the 01<sup>st</sup> day of  
December 2022.

**Additional District Judge(FTC),  
Vellore.**