

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 20st day of February 2023, Monday.

I.A.NO.3/2022 in
O.S.NO.17/2020

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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 16.02.2023 for final hearing in the presence of Thiru.K.M.Boopathi, Counsel for the petitioners/proposed parties and of Thiru.M.L.Jambu Kumar and Thiru.J.Dinesh Kumar, Counsels for the respondent/defendant and upon hearing the arguments of both sides 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 3 and Sec.151 of CPC, prays to implead the petitioners/proposed parties 2 to 4 as Plaintiffs 2 to 4 in the main suit.

2.The averments of the affidavit is as follows:-

The 2nd petitioner herein is the 1st proposed party in the I.A. and she

filed this affidavit on behalf of other petitioners also. The Plaintiff is the 2nd petitioner's husband and the respondent has entered into an 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 said 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 3,4 petitioners/proposed parties as his legal heirs to succeed his estate left out by the deceased and they are the only legal heirs of the above said deceased Plaintiff herein and they are entitled to get the advance sale deed in favour of themselves as per the agreement of sale executed by the respondent dated 17.02.2017. The respondent is liable to execute the sale deed in favour of them as per the agreement dated 17.02.2017. Hence the petitioner filed this petition to implead the petitioners/ proposed parties as Plaintiffs 2 to 4 in the main suit 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 affidavit averments are denied except those that are admitted by the respondent herein. The suit was filed by the Plaintiff on 10.01.2020 against the defendant and he died on 23.09.2020. The petitions filed under Or.22, Rule 3 of CPC, under Or.22 rule 9 of CPC, petition u/s.5 of Limitation Act on

7.3.2021 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 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. Hence the respondent prays to dismiss the petition.

4. The point for consideration in this petition is;

Whether the petition is to be allowed or not?

5. Point:

The petitioners have stated that the Plaintiff is the 2nd petitioner's husband and the respondent has entered into an 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 said 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 3,4 petitioners/proposed parties as his legal heirs to succeed his estate left out by the deceased and they are the only legal heirs of the above said deceased Plaintiff herein and they are entitled to get the advance sale deed in favour of themselves as per the agreement of sale executed by the respondent dated 17.02.2017. The respondent is liable to execute the sale deed in favour of

them as per the agreement dated 17.02.2017. Hence the petitioner filed this petition to implead the petitioners/ proposed parties as Plaintiffs 2 to 4 in the main suit.

But the respondent denied the allegations and stated that The suit was filed by the Plaintiff on 10.01.2020 against the defendant and he died on 23.09.2020. The petitions filed under Or.22, Rule 3 of CPC, under Or.22 rule 9 of CPC, petition u/s.5 of Limitation Act on 7.3.2021 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 Limitation Act says that for each and every day the delay must be explained.

Even though the respondent denied the allegations, but not specifically denied that the petitioners are not legal heirs of deceased plaintiff and they are not entitled to continue the suit and also not specifically denied the cause of does not continues with the petitioners. Further the petition to condone the delay of 350 days in filing the petition to implead the legal heirs and petition to setaside the abatement if any caused in impleading the legal heirs are already allowed on the above stated allegations made in the affidavit filed along with this petition in I.A.No.1/2022 on 21.09.2022 and in I.A.No.2 /2022 dt. 01.12.2022 respectively and there is no appeal filed by the respondent as against the said orders. Hence this petition has to be allowed.

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

Dictated to steno typist, typed by her directly, corrected and pronounced by me in open court, this the 20st day of February 2023.

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

Bothside witnesses and Exhibits:

NIL

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

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 20st day of February 2023, Monday.

I.A.NO.3/2022 in
O.S.NO.17/2020

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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, 2nd 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, 8th East Main Road,
Gandhi Nagar, Katpadi Taluk, Vellore – 06, Vellore District.

.. Respondent/Defendant.

Petition filed by the petitioner under Or. 22 Rule 3 and Sec.151 of CPC,
prays to implead the petitioners/proposed parties 2 to 4 as Plaintiffs
2 to 4 in the main suit.

This petition is coming before me on 16.02.2023 for final hearing in the
presence of Thiru.K.M.Boopathi, Counsel for the petitioners/proposed parties
and of Thiru.M.L.Jambu Kumar and Thiru.J.Dinesh Kumar, Counsels for the
respondent/defendant and upon hearing the arguments of both sides 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:-

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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 20st day of February 2023.

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