

**IN THE COURT OF THE PRINCIPAL SUBORDINATE JUDGE,  
VILLUPURAM.**

**PRESENT : Thiru.N.S.Jayaprakash, B.Sc., B.L.,  
Principal Subordinate Judge, Villupuram.**

**Monday, the 10<sup>th</sup> day of June 2024**

**IA No.832/2023**

**in**

**OS No.170/2013**

1. Padmini

2. Rani

3. Vetriselvi

4. Nalini

5. Priya

..... Petitioners/Plaintiffs

//Vs//

1. Shenbagam

2. R.Rajmohan

3. N. Suresh

4. S. Rajmohan

5. S. Gopu

6. T. Lakshmi

7. N. Sekar

8. G. Ashok

9. P. Katiresan

10. Kandamangalam Panchayath Rep. by Block Development Officer,

11. S. Manikandan

12. S. Sankar

...Respondents/Defendants

13. Kaliyaperumal

...Respondent/Proposed party

(13th Respondent is the husband of deceased 3rd Plaintiff Vetriselvi)

This petition having been taken on file on 16.11.2023 and came up for final hearing in the presence of Tr.R.Tharaniventhan, learned Advocate on behalf of the Petitioners/Plaintiffs and Tr.T. Prabakaran, learned Advocate on behalf of the R1, R2 and R3 to R12 called absent set exparte, Tr.V.Devendiran, learned Advocate on behalf of the R13, upon perusing the case records, upon hearing arguments of both side and having been stood over for consideration till this date, this court delivered the following:-

### **ORDER**

The 2nd Petitioners/2nd Plaintiffs have filed ther petition under Section 5 to condone the delay of 1070 days in setting aside the abatement.

#### **2. The affidavit in brief is as follows:-**

The 2nd Petitioner is the 2nd Plaintiff in the suit. The petitioners have filed the suit for partition and separate possession of 3/4th share in the suit properties as against defendants. During the pendency of this suit 3rd plaintiff Vetriselvi died and she had executed a Registered Will dated 07.07.2020. The 2nd petitioner's sister Vetriselvi got married with Kaliyaperumal on 04.03.2010. But the said Kaliyaperumal disliked her sister Vetriselvi and deserted her continuously. Hence the marriage between the said Vetriselvi and Kaliyaperumal had broke down without even consummating. All along from the year 2010 till her death her sister Vetriselvi was residing with out parents house at Thengaithittu under the custody of our parents and herself. The said Kaliyaperumal never taken any step to restitute the conjugal right with 2nd petitioner sister Vetriselvi. While the facts are being so 2nd petitioner's sister Vetriselvi died at Pondicherry on 24.07.2020 by leaving her last last Will dated 07.07.2020 bequeathing her share in the property to petitioner and thus she entitled to represent and succeed to the estate of Vetriselvi. The petitioner filed a memo on

06.08.2021 and it was recorded. As the matter was stayed by the High Court in CRP No.3874/2017. She could not file the application for amendment. Now the CRP No.3874/2017 had been dismissed on 10.10.2022 with a direction to dispose the case within 6 months. The 2nd petitioner filed application under Order 6 Rule 17 CPC to amend the plaint with effect of order in memo dated 06.08.2021. The said application had been numbered in IA 1114/2022 and after enquiry the petition had been dismissed by this court on 12.10.2023. Further the court by its order dated 12.10.2023 had directed to file the necessary petition to implead the legal representatives of the deceased Vetriselvi. As per the Will dated 07.07.2020 the sole legatee and entitle to the share of property of deceased Vetriselvi. Even though said Kaliyaperumal is not entitle to share of Vetriselvi, as per order of this court and out of abundant caution he has to be implead as a party to the suit. Hence there is delay in filing this application. The delay is neither will full nor wanton and it is beyond our control. That the delay is should be condoned as otherwise they will suffer irreparable loss. Hence the petition.

### **3. The Counter filed by the R2 and adopted by R1 is as follows:**

This petition filed by the petitioners/plaintiffs to condone the delay of 1070 days is not maintainable either on law or on facts and liable to be dismissed in limine. The 2nd respondent specifically denies that the 3rd plaintiff had executed a registered will dated 07.07.2020 bequathing her property to the 2nd petitioner and the 2nd petitioner is entitled to the estate of Vetriselvi. The 2nd petitioner had concealed several facts and filed this petition. The respondent admits that Vetriselvi had married with Kaliyaperumal on 04.03.2010. The allegation in the affidavit that the said Kaliyaperumal disliked the 3rd petitioner Vetriselvi, and deserted her continuously, and further that Marriage between Vetriselvi and Kaliyaperumal broke down without even consummating is denied. It is

further denied that Vetriselvi residing with her parents. The respondent is specifically denies that the said Vetriselvi had executed a Will in favour of 2nd petitioner. The petitioner had not explained the delay of 1070 days for filing the Section 5 Limitation Act affidavit. The 2nd defendant specifically denies all the allegations in the affidavit except those that are specifically admitted herein. This petition is liable to be dismissed.

**4. The Counter filed by the R13/Proposed party is as follows:**

The petition is not maintainable either in law or on facts and is liable to be dismissed with costs. The affidavit petition are false and suppression of facts, except the contents that this 13th respondent/proposed party is the husband and the legal heirs of the deceased 3rd plaintiff namely Vetriselvi. The respondent/proposed party strongly denies that petition averments. The respondent/Proposed party submits that only after the direction issued by this court while dismissing the application in IA No.1114/2020 by order dated 12.10.2023 this petitioner come with this petition otherwise she would have misled this court. The petitioner deliberately not disclosed the pendency of POP No.77/2022 on the file of the Hon'ble Principal District Judge at Pondicherry filed by her against the respondent/proposed party, for probating the alleged will dated 07.07.2020. Moreover the said POP the 13th respondent/proposed party filed his counter along with the copy of the last Will dated 11.07.2020 executed by Vetriselvi in his favour and therefore the claim of sole legatee on the basis of invalid and created Will dated 07.07.2020 in her favour is unlawful and to be rejected. The above stated allegations regarding sole legatee and the Will dated 07.07.2020 should be withdrawn by the petitioners and in failure this court may be pleased to direct the petitioner 2nd plaintiff to not press the alleged false contents. The said Will dated 07.07.2020 has no legal binding. The respondent/proposed party submits that subject to the strong protest against the contention made in

the affidavit petition regarding the alleged Will dated 07.07.2020 and the claim of sole legatee by the petitioner, this petition please to be decided by this court in the interest of justice. This petition is liable to be dismissed with costs.

4. Heard both sides. Perused Records. Neither Petitioners nor Respondents have examined any witnesses and marked exhibits.

**5. Point for Consideration:-**

- (i). Whether the petitioner has shown sufficient cause to allow the petition in I.A.No.832/2023 in OS No.170/2013?
- (ii). Whether the petition is to be allowed or not?

**6. On Point:-**

The petitioner is the 2nd plaintiff. The 3<sup>rd</sup> plaintiff by name Vetriselvi is a sister of other plaintiffs. All the plaintiffs together filed the suit. During pendency of suit, 3<sup>rd</sup> plaintiff by name Vetriselvi had died on 24.07.2020. The petitioner had already filed an application in IA No.1114/2022 under Order 6 Rule 17 CPC and the same was dismissed on 12.10.2023. In the said petition, this petitioner has stated that she is the sole legal heir of deceased Vetriselvi since a Will was executed by Vetriselvi on 07.07.2020. This court has held that the legal heirs of deceased Vetriselvi shall be added as party. After dismissal of the said petition, the petitioner has filed this petition to condone the delay in adding the legal representative of deceased Vetriselvi, the 13<sup>th</sup> respondent herein.

7. The 13<sup>th</sup> respondent has filed a counter denying the averments made regarding the execution of Will by deceased Vetriselvi and the contention of the petitioner that she is the sole legal heir. But, the 13<sup>th</sup> respondent has

stated that this petition may be allowed by rejecting the other allegations. As far as the averments regarding execution of Will by deceased Vetriselvi and claim of heirship by the petitioner, the same could be decided only in the trial. This petition is for a limited purpose to decide whether the delay of 1070 days in setting aside the abatement caused could be allowed or not.

8. Already the petitioner has come forward with a petition in IA 1114/2022. The same was filed on 19.12.2022 and disposed on 12.10.2023. Further, adding of legal representative is indispensable. Without the proper parties, the suit could not be adjudicated. Considering the said fact, this court is of considered view to allow this petition on minimum cost.

**In the result**, this petition will be allowed on cost of Rs.1000/- which shall be divided and payable in equal proportion to R1, R2 on or before 14.06.2024.

Dictated to the Steno-Typist, typed on computer, corrected, print out was taken and pronounced by me in the open court, on this 10<sup>th</sup> day of June 2024.

Principal Subordinate Judge,  
Villupuram.

Petitioner's side Witness and Exhibits: -  
NIL.

Respondent's side Witness and Exhibits: -  
NIL.

Principal Subordinate Judge,  
Villupuram.