

In the Court of Subordinate Judge, Aruppukottai

Present : Thiru. V. Ramalingam, B.Sc., B.L.,
Subordinate Judge, Aruppukottai.

I.A.No.3/2023 in A.S.No.8/2020

Tuesday, the 7th Day of November 2023

Radhakrishnan(Died)	...	Appellant
1. Anusuyadevi @ Hamsaladevi		
2. Pothiraj		
3. Rameshkumar		
4. Rajkumar	...	Petitioners/Proposed 2 nd to 5 th Appellants
	/Vs/	
Abdul Khader	...	Respondent/Respondent

This Application came up for final hearing before me on 17.10.2023 in the presence of Thiru. N. Solairaj, Advocate for the Petitioners and Thiru. B. Ganesan, Advocate for the Respondent and upon hearing the arguments on both side and upon perusing the records, having stood over till this date for my consideration, this Court passed the following

ORDER

1. This Application has been filed by the Petitioners Under Order 22 Rule 9 and Section 151 CPC to set aside the abatement order passed for non-filing of application to implead legal heirs of deceased Appellant.

2. Brief averments of Petition : -

When appeal is pending, the Appellant died on 13.03.2022. 1st to 4th Petitioners are legal heirs of deceased Appellant. Immediately after the death of Appellant, the Petitioners are unable to file application to implead legal heirs for deceased Appellant. Hence, the case filed by the Appellant is abated. Except the Petitioners, Appellant has no other legal heirs. The above said mistake has not happened due to wantonly. Hence, it is necessary to set aside the abatement order passed for non-filing of application to implead legal heirs of deceased Appellant. Hence, this application is to be allowed.

3. Brief averments of Counter of Respondent :-

The application filed by the Petitioners is not maintainable as per law. The Petitioners have filed this application to delay the main appeal proceedings. The Petitioners have not filed death

certificate and legal heir certificate of deceased Appellant. The Petitioners are not entitled for the relief prayed by them. The reasons stated in the application are not acceptable. Hence, this application is to be dismissed.

4. Point for consideration in this Application is whether this Petition is to be allowed or not?

5. **Point:-**

Heard both sides. Perused available records.

6. The Petitioners have filed this Application to condone the delay of 133 days caused in filing application to implead the legal heirs to the deceased Appellant. Eventhough, the Respondent has denied the Petitioners' case, the Respondent has not stated in his counter as what kind of prejudice would cause if at all this application is allowed. Further, eventhough the Respondents has stated in his counter as the Petitioners have not filed any legal heir certificate, the Respondent has not denied in his counter as the Petitioners are not legal heirs of deceased Appellant. Hence, this court feels that a fair opportunity will be given to the Petitioners, since this is court of first instance and the reasons stated in the application is acceptable. Hence to putforth both side case before this court to decide the suit on merit, this court grants opportunity to the Petitioners with condition, since this application has been filed with delay of 133 days.

7. In the result, this application is allowed with condition that the Petitioners shall pay the cost of Rs.500/- to the Respondent on or before 15.11.2023, failing which, this application shall stand dismissed. Call on 15.11.2023.

Dictated to the Stenographer and transcribed and typed by her in the computer and after correction, this Order is pronounced by me in the Open Court this the 7th day of November 2023.

Subordinate Judge,
Aruppukottai.

Witnesses examined on the side of the Petitioners, Respondents:-
Documents marked on the side of the Petitioners, Respondents:-

Nil
Nil

Subordinate Judge,
Aruppukottai.