

In the Court of Subordinate Judge, Aruppukottai

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

I.A.No.2/2021 in O.S.No.27/2019

Wednesday, the 3rd Day of August 2022

1. Mahalakshmi		
2. Leelavathi		
3. Ganesan		
4. Nagajothi		
5. Kannan		
6. Rajeswari		
7. Venkadesh	...	Petitioners/Plaintiffs

/ Vs/

1. Dhanalakshmi		
2. Ramasamy		
3. The Sub Registrar, Sub Registrar Office, Aruppukottai	...	1st to 3rd Respondents/ 1st to 3rd Defendants
4. Subbulakshmi		
5. Sathiyaraj	...	4th, 5th Respondents/ Proposed 4th, 5th Defendants

This Application came up for final hearing before me on 20.07.2022 in the presence of Thiru. B. Kannan, Advocate for the Petitioners/Plaintiffs and Thiru. P. Jeyakumar, Advocate for the 1st, 4th, 5th Respondents and Government Pleader for 3rd Respondent and 2nd Respondent died 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/Plaintiffs 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 2nd Defendant.

**2. Brief averments of Petition : -**

On 06.06.2020 the 2nd Respondent/2nd Defendant died. The 1st Respondent/1st Defendant filed memo regarding the death of 2nd Defendant only on 06.03.2021. Further, due to Covid-19, the Petitioners were not able to file petition to implead legal heirs of deceased 2nd Defendant in time,

hence the case against the 2nd Defendant was abated. Hence, this application is to be allowed.

**3. Brief averments of Counter of 1st, 4th, 5th Respondents :-**

2nd Defendant Ramasamy died on 06.06.2020 and the death certificate of Ramasamy was obtained on 03.10.2020. Due to Covid-19 pandemic, the 1st Respondent was unable to file memo before this Court immediately and later during the normal course of court proceedings on 06.03.2021, the 1st Respondent/1st Defendant filed memo regarding the death of 2nd Defendant. The Petitioners failed to implead the legal heirs of deceased 2nd Defendant within the prescribed limitation period. They filed the impleading petition on 29.11.2021 only. Hence, the suit is abated and now they filed petition to set aside the abatement without any reasonable cause. Hence, this application is to be dismissed.

4. The counsel for the 3rd Respondent/3rd Defendant endorsed in the application as 'no counter of R3'.

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

**6. Point:-**

Heard both sides. Perused available records.

7. The Petitioners have filed this Application to set aside the abatement order passed against the deceased 2nd Defendant. Eventhough, the 1st, 4th, 5th Respondents have vehemently opposed this application, they have not denied about the legal heirs of deceased 2nd Defendant. Hence, this court feels that a fair opportunity will be given to the Petitioners, since this is court of first instance. Hence to putforth both side case before this court to decide the suit on merit, this court grants opportunity to the Petitioners. Hence, this petition is allowed with condition.

8. In the result, this application is allowed with condition that the Petitioners shall pay a sum of Rs.500/- to the 1st, 4th, 5th Respondents by on or before 10.08.2022. Call on 10.08.2022.

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 3rd day of August 2022.

Subordinate Judge,  
Aruppukottai.

**Witnesses examined on the side of the Petitioners, Respondents:-** Nil

**Documents marked on the side of the Petitioners, Respondents:-** Nil

Subordinate Judge,  
Aruppukottai.

Sub Court, Aruppukottai  
I.A.No.2/2021 in O.S.No.27/2019  
Order dated: 03.08.2022