

In the Court of Subordinate Judge, Aruppukottai

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

I.A.No.3/2021 in O.S.No.169/2017

Friday, the 5th Day of August 2022

1. Alaguselvi			
2. Panchavarnam		...	Petitioners/Plaintiffs
	/ Vs/		
1. Moorthy(died)			
2. Chinnamoorthy			
3. Alagar			
4. Thandeeswaran		...	1st to 4th Respondents/ 1st to 4th Defendants
5. Alagulakshmi			
6. Gopalakrishnan			
7. Nagarajan		...	5th to 7th Respondents/ Proposed 5th to 7th Defendants

This Application came up for final hearing before me on 27.07.2022 in the presence of Thiru. B. Kalanithi, Advocate for the Petitioners/Plaintiffs and Thiru. N. Solairaj, Advocate for the 4th Respondent and 2nd, 3rd, 5th to 7th Respondents remained exparte and 1st 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 to set aside the abatement order passed for non-filing of application to implead legal heirs of deceased 1st Defendant.

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

On 22.03.2012, the 1st Respondent/1st Defendant died. 5th to 7th Respondents are legal heirs of deceased 1st Defendant. But, due to lack of legal knowledge, the Petitioners have not stated about the death of 1st Defendant during filing of main suit. It is necessary to file petition to implead 5th to 7th Respondents within 90 days. Hence, abatement order was passed against 1st Defendant. Hence, this application is to be allowed.

**3. Brief averments of Counter of 4th Respondent:-**

1st Defendant died before 5 years from filing of main suit. The main suit is not maintainable for including of his own brother without knowing the death particulars of his brother. There is no cause of action with regard to 1st Defendant. It is not acceptable to say that due to lack of legal knowledge, the death of 1st Defendant was not stated during filing of suit. Section 5 of Limitation Act, Order 22 Rule 9 CPC and Order 22 Rule 4 CPC are applicable only for the persons who died after suit. 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 set aside the abatement order passed against the deceased 1st Defendant. Eventhough, the 4th Respondent has vehemently opposed this application, he has not denied about the legal heirs of deceased 1st Defendant. Hence, this court feels that a fair opportunity will be given to the Petitioners, since this is court of first instance and 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.

7. In the result, this application is allowed with condition that the Petitioners shall pay a sum of Rs.500/- to the 4th Respondent by on or before 11.08.2022. Call on 11.08.2022.

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 5th day of August 2022.

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

**Nil**  
**Nil**

Subordinate Judge,  
Aruppukottai.

Subordinate Judge,  
Aruppukottai.