



A.No.4919
in TOS No.1 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-12-2025

CORAM

THE HONOURABLE MR.JUSTICE P. DHANABAL

A No. 4919 of 2025

IN

TOS NO. 1 OF 2018

Smt.Akila Vijayakumar
W/o.Sri Vijayakumar No.1, Maharaja
Surya Road, Alwarpet, Chennai-600018.

Applicant(s)

Vs

Smt.Saraswathy Bhuvarahan and 5 others
W/o.Late Sri.Bhuvarahan New No.78, Old
No.6A, Sriman Srinivasan Road, Venus
Colony, Alwarpet, Chennai-600018.

Respondent(s)

For Applicant :	Mr.N.L.Rajah Senior Counsel for Ms.Vidya Chetan
For R1 & R2 :	Mr.N.Duraikannan
For R3 & R4 :	Mr.A.V.Bharathi

ORDER

This application is filed by the applicant / plaintiff to set aside the abatement caused due to the death of third defendant in TOS No.1 of 2018.



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2. According to the applicant, she is the plaintiff in the main suit. The suit is filed to probate the Will. During the pendency of the suit, the third defendant died on 31.10.2024. Despite best efforts to verify the address, the applicant could not obtain any authentic proof at that stage, but upon making personal and diligent enquiry and on basis of certain documentary evidence and credible information received from reliable sources, the applicant came to know the correct and present address of the legal representatives of the deceased third defendant. Therefore, there is a delay in taking steps to implead the legal heirs of the deceased third defendant. Therefore, the petitioner filed an application to set aside the abatement caused due to the death of the third defendant.

3. The respondents filed counter affidavit objecting the reasons stated by the applicant and according to the respondents, the provisions quoted in the application is not correct, main original suit itself is not maintainable and there are no grounds to allow this application. Once the suit is abated, the cause of action does not survive. The suit itself is not maintainable, since the plaintiff's claim for probate is based on a forged and fabricated Will. The property in question was already disposed of by a valid registered settlement deed dated 10.01.2008 executed by the Testator during his lifetime and the said settlement deed was upheld by the competent Court in O.S.No.4120 of 2014 and therefore the Will now propounded is void and unenforceable. Therefore, the application is liable to be dismissed.

4. Heard both side counsel.



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5. Considering the reasons stated in the affidavit and also considering the facts and circumstances of the case, in order to give fair chance to the applicant to proceed the case and to meet the ends of justice, this application is to be allowed. Accordingly, this Application is allowed and the merits of the case can be decided in the main petition.

11.12.2025

(2/3)

mtl



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P.DHANABAL, J.

mtl

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