



WEB COPY

CRP No. 566 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-02-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

CRP No. 566 of 2026

Sivaji, S/o. Ponnusamy,
Melakadu, Kuruvapulam,
Vedaranyam Taluk,
Nagapattinam District.

..Petitioner(s)

Vs

Vaiyapuri, S/o. Rathinathevar,
Melakadu, Kuruvapulam,
Vedaranyam Taluk,
Nagapattinam Distric.
Ramalinga Thevar (Died).

..Respondent(s)

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the order dated 07.10.205 made in IA No. 4 of 2024 in OS No. 89 of 2020 on the file of the Learned District Munsif Cum Judicial Magistrate, Vedaranyam.

For Petitioner(s): Mr. G.Mageshkumar

For Respondent(s): Mr.S.Senthil

ORDER

This Civil Revision Petition has been filed challenging the order passed by the Trial Court, dismissing the application filed by the petitioner to bring on record the legal representatives of the deceased 2nd defendant.



2. The petitioner herein/ plaintiff filed a suit in O.S.No.89 of 2020 for bare injunction against the first defendant and one Ramalinga Thevar (now deceased)/ 2nd defendant. Pending suit, the said Ramalinga Thevar died on 15.08.2021. Therefore, instant application has been filed by the petitioner on 07.06.2024 seeking permission to bring on record the legal representatives of the deceased 2nd defendant. The said application was dismissed by the Trial court on ground that the petitioner failed to file petitions to set aside the abatement caused due to the death of 2nd defendant and also to condone the delay in filing the petition to set aside the abatement. Aggrieved by the same, the petitioner has come before this court.

3. The learned counsel for the petitioner would submit that merely because the second defendant in the suit is died, the entire suit will not abate and hence, the petitioner is entitled to proceed with the suit in respect of the first defendant. He would further submit that in a petition seeking to implead the legal of heirs of the deceased party, the court has to take liberal view and allow the parties to proceed with the suit in respect of the legal representatives of the deceased parties.

4. A perusal of the affidavit filed in support of the petition to bring on record the legal representatives of the deceased 2nd defendant would indicate that the petitioner has not given any reason for his failure to take steps for three



years. The 2nd defendant died on 15.08.2021 and the instant application was filed only on 07.06.2024. Further, it is also seen from the impugned order that the first defendant in the suit filed a memo on 14.08.2022 before the Trial Court informing the death of the 2nd defendant. In spite of the same, the petitioner has not filed any application to bring on record the legal representatives of the deceased 2nd defendant immediately and in the affidavit filed in support of the instant petition, no reason has been assigned for failure of the petitioner/plaintiff to file such petition in time.

5. The Trial Court may not be correct in observing that the petition filed by the petitioner is liable to be dismissed for his failure to file petitions to set aside the abatement and to condone the delay in filing the petition to set aside the abatement. As per the law settled by the Apex Court in ***Om Prakash Gupta @ Laloowa (Now deceased) and others Vs. Satish Chandra (Now deceased)*** reported in ***2025 SCC Online SC 291 = 2025 I NSC 183***, even if separate petitions to set aside the abatement, and to condone the delay in filing the petition to set aside the abatement are not filed, still the court can allow the petition to bring on record the legal representatives of the deceased party, provided the petitioner is able to show sufficient cause for his failure to file such petition in time. In the case on hand, absolutely, there is no reason given by the petitioner for his failure to bring on record the legal representatives of the deceased 2nd defendant in time.



6. In view of the above reason, I concur with the final conclusion reached by the trial court and this court is not inclined to interfere with the impugned order. However, it is made clear that merely because the petition to bring on record the legal representatives of the deceased 2nd defendant is dismissed, the entire suit will not abate. Therefore, the petitioner is entitled to proceed with the suit as against the first defendant, who is said to be alive.

7. With the above clarification, this civil revision petition is dismissed.

There shall be no order as to costs.

27-02-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

MST

To

The District Munsif cum Judicial Magistrate,
Vedaranyam.



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S.SOUNTHAR, J.

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