

ORDERS ON I.A No.7 to 9

The applicant counsel Sri.J.S., filed I.A. No.7 under order 22 rule 4 r/w 151 of C.P.C. praying to permit the defendant No.1(a) to (e) to come on record as legal representatives of deceased defendant No.1, I.A.No.7 filed under order 22 rule 9 r/w 151 of C.P.C. praying to set aside the abatement order and I.A.No.8 under section 5 of Limitation Act to condone the delay of 06 days in filing the application, along with affidavit in the interest of justice and equity.

Sri.J.S., Advocate stated in his affidavit that the defendant No.1 has died on 20.07.2022 and the same is already brought to the notice of the court. Today, the the plaintiff is taking steps against the legal representatives of the defendant No.1 and it

is very much necessary to issue the notice to the legal representatives of defendant No.1 for contest the matter. Now the above case is posted for issuance of summons. During the pendency of the suit, the 1st defendant was died on 20.07.2022 leaving behind his wife and children as defendant No.1(a) to 1(e) as his legal heirs. Recently, his counsel advised the plaintiff to bring the LRs of the deceased 1st defendant on record as his legal heirs to the above said suit as they are also necessary parties to the above said suit. Hence, prays for allow the application.

The defendant No.1(a) to (e) have not appeared before the court, though the notice on IA No.7 to 9 served on them.

Heard and perused the entire record.

The points arises for my consideration are as under :

1) Whether the I.A. No.7 to 9 filed by the applicants is deserves to be allowed ?

2) What order?

My answer to the above points are in the **affirmative** for the following :

REASONS

Point No.1 :- The plaintiffs have field the suit against the defendants for the relief of partition and separate possession. The defendant No.1 has died on 20.07.2022 and the same is already brought to the notice of the court. Today, the the plaintiff is taking steps against the legal representatives of the defendant No.1 and it is very much necessary to issue the notice to the legal representatives of defendant No.1 for contest the matter. Now the above case is posted for issuance of summons.

During the pendency of the suit, the 1st defendant was died on 20.07.2022 leaving behind his wife and children as defendant No.1(a) to 1(e) as his legal heirs. Recently, his counsel advised the plaintiff to bring the LRs of the deceased 1st defendant on record as his legal heirs to the above said suit as they are also necessary parties to the above said suit.

On perusal of the entire records and grounds urged by the 2nd plaintiff in the application, during the pendency of the suit, the defendant No.1 died and hence, the legal heirs of defendant No.1 are necessary parties to the suit and presence of all the parties is necessary to adjudicate the matter effectively and as such bringing the Lr's of the deceased defendant No.1.

On perusal of the grounds urged in the application, it reveals that it is just and necessary to bring the Lrs' of the deceased defendant No.1 to come on record as the legal representatives. Hence, it is just and necessary to allow the applications in the justice and equity. Hence, I answer the above point in the **Affirmative**.

Point No.2:- From the aforesaid discussion, I proceed to pass the following :

ORDER

I.A. No.7 under order 22 rule 4 r/w 151 of C.P.C. to permit the defendant No.1(a) to (e) to come on record as legal representatives of deceased defendant No.1, I.A.No.7 filed under order 22 rule 9 r/w 151 of C.P.C. praying to set aside the abatement order and I.A.No.8 under section 5 of Limitation Act to condone the delay of 06 days in filing the application, are hereby **allowed**.

For amendment of plaint and for
amended plaint.

Call on –

(Dictated to the Stenographer directly on computer, then corrected by
me and then pronounced in the Open Court on 04th Day of March 2023)

V Addl. Senior Civil Judge
& JMFC., Mysuru.