

: Orders on I.A.No.4 to 6:

Interlocutory Application No.4 to 6 filed by the plaintiffs to bring the Legal Representatives (hereafter referred as LRs) of deceased defendant.

The said applications are supported with the affidavits of plaintiff No.2 K.C. Harish, wherein he stated that the suit schedule property is a immovable property, as such, the right to sue survives as against the legal representatives of deceased defendant.

Accordingly, prayed to implead LRs of deceased defendant in this case.

Interlocutory Application No. 4 to 6 notice sent to the LRs of deceased defendant returned with endorsement stating “Door Locked”.

On that basis, the point for consideration is as under:

“whether the cause of action against surviving LRs of deceased sole defendant survives as this suit is bare injunction suit?”

Heard the arguments. Perused the materials on records, on that basis, my finding on the above point is in the negative, for the following:

REASONS

The plaintiffs have filed this suit against one Ramappa N claiming right, title, interest as well as exclusive possession over the suit schedule property as on the date of the suit. The specific allegations made against the defendant in the suit is that the defendant without having any manner of right, title and interest over the suit schedule property came near the suit schedule property and tried to interfere with the possession of the plaintiffs over the suit schedule property. The plaintiffs

in the plaint also stated that they have lodged the complaint against the defendant before Yelahanka police station but the police have not taken any action against the defendant and filed this suit.

The entire plaint allegations nowhere discloses that the defendant came near the suit schedule property along with his children now intended to be impleaded as defendants in the suit. It is not the case of the plaintiffs in the plaint that the defendant along with his children tried to interfere with the possession of the plaintiffs over the suit schedule property or children of deceased defendant tried to trespass in to the suit schedule property. The plaintiffs along with the suit also produced an endorsement issued by the police. The said endorsement also discloses that the allegations made only against the defendant and not against his children. Therefore, even there is no prima-facie material on record to show that children of deceased defendant also tried to interfere with the plaintiffs' possession over the suit schedule property.

As stated earlier, this is a bare injunction suit. In a bare injunction suit,

generally cause of action does not survive against the legal heirs of deceased sole defendant because the relief sought is indeed personal in nature and aimed at a specific individual or entity to refrain them from doing a particular act. Upon the death of sole defendant, a suit abates unless there is a specific actionable threat from the legal heirs of deceased defendant. As discussed above, the plaint averments nowhere shows that children of deceased defendant joined their hands with their father/defendant to interfere with the plaintiffs' possession over the suit schedule property. Absolutely there is no whisper or even stray sentence in the plaint that shows any allegations against the children of deceased defendant. In the absence of any such allegations or averments in the plaint, certainly, cause of action to continue the suit against LRs of deceased sole defendant does not survive. When the cause of action does not survive against the children of deceased defendant, certainly question of impleading them in the suit does not arise.

Apart from that the relief of permanent injunction is recurring in nature and if at all

these children of deceased defendant tried to interfere with plaintiffs' possession over the suit schedule property, certainly the plaintiffs are not prevented from initiating any legal action or bring up a suit for permanent injunction against them. When the plaintiffs have right to sue against the LRs of deceased defendant is available if they tried to interfere with the possession of the plaintiffs over the suit schedule property; certainly this suit cannot be continued against the children of deceased defendant after the death as the cause of action claimed in the suit is not applicable to them because as on the date of cause of action claimed in the suit i.e., on 15.07.2018 these LRs of deceased defendant have not committed any illegal acts claimed by the plaintiffs. Under such circumstances, Interlocutory Application No.4 to 6 cannot be allowed and after the death of deceased sole defendant, suit is liable to be abated. Accordingly, my finding on the above point is in the negative. In the result, I proceed to pass the following:

ORDER

Interlocutory Application No.4 to 6 are hereby dismissed.

Consequently, suit of the plaintiffs is hereby abated.

No order as to cost.

(PADMA PRASAD)
II Addl. City Civil & Sessions Judge,
BANGALORE.

(Order pronounced in open
Court)

Vide separate order

ORDER

(R.Y. Shashidhara),
II Addl. City Civil and Sessions Judge,

Bangalore.