

KABG040004142021



13.09.2024

O.S.No.300/2021

ORDERS ON I.A.NO.VI & VII

These applications are filed U/Sec. 151 of C.P.C. and U/O.IX Rule 2 R/w. Sec.151 of C.P.C. seeking to set aside the order of dismissal as against defendants No.1 to 5 dated 05.03.2022.

2. In the affidavit accompanying the application, it is stated that the suit came to be dismissed as against defendants No.1 to 5 on 05.03.2022 on account of failure on the part of plaintiff to take steps against said defendants. But however, restoration of suit as against defendants No.1 to 5 is very much necessary in the interest of justice and equity. On these grounds, the plaintiff has prayed to allow the present application.

3. Since the summons was not at all issued to defendants No.1 to 5 in the suit, there is no question of calling for objection to the said application from the said defendants.

4. The following points would arise for my consideration :

i) Whether the application i.e., I.A. No.VI and VII filed by plaintiff U/Sec.151 of C.P.C. and U/O.IX Rule-2 R/w. Sec.151 of C.P.C. deserve to be allowed ?

ii) What order?

5. My answer to above points are as under :

Point No.1 : In the Affirmative,

Point No.2 : As per final order
for the following:

REASONS

6. Point No.1 : Plaintiff has filed this suit for the relief of partition and separate possession. It is pertinent to note that on 05.03.2022, the suit came to be dismissed as against defendants No.1 to 5 due to failure on the part of plaintiff to take steps to secure the presence of defendants No.1 to 5 in the suit.

But, now after a period of about two years, the plaintiff has filed the present application seeking restoration of suit against the said defendants. No doubt, there is inordinate delay in filing the present application, but however perusal of plaint, reveals that defendants No.1 to 5 have got substantial interest in the subject matter of the suit and they are the necessary parties to the suit since the present suit is for the relief of partition and separate possession and defendants No.1 to 5 are said to be the heirs of original propositus. As such, their presence is required for effective and complete adjudication of the matter in question and without their presence, the matter in controversy cannot be effectively and finally adjudicated and the suit may fail on the ground of non-joinder of necessary party. Hence, in order to avoid multiplicity of proceedings, it is very much necessary to allow the present application in the interest of justice. For these reasons, I answer **Point No.1 in the Affirmative.**

O.S.No.300/2021

7. **Point No.2** : For the above said reasons, I proceed to pass the following :

ORDER

The application i.e., I.A.No.VI and VII filed by plaintiff U/Sec.151 of C.P.C. and U/O.IX Rule 2 R/w. Sec.151 of C.P.C. are hereby allowed on cost of Rs.300/-.

The order of dismissal dated 05.03.2022 is hereby set aside and the suit against defendants No.1 to 5 is restored.

Issue suit summons to defendants No.1 to 5, returnable by 27.09.2024.

**Prl. Judge and J.M.F.C,
Belagavi.**