

KABG040008322018



13.11.2024

O.S.No.400/2018

COMMON ORDERS ON I.A.NO.VI TO XI

These applications are filed U/O. XXII Rule 4 R/w. Sec.151 of C.P.C., U/O.XXII Rule 9 R/w. Sec.151 of C.P.C. and U/Sec.5 of Limitation Act by the counsel for plaintiffs. In the affidavit accompanying the application, the GPA Holder of plaintiffs No.1 to 9 has stated that defendant No.2 died on 10.08.2018, leaving behind his legal representatives i.e., proposed defendants No.2(a) to (c) mentioned in the applications. The legal heirs of defendant No.2 are to be brought on record in view of death of defendant No.2 since their presence is very much necessary in the suit.

On these grounds, the plaintiffs have prayed to allow the applications.

2. The defendants filed memo after receiving copies of I.A.No.VI to VIII stating that defendant No.2 has got another legal representative and his name is not shown in I.A.No.VI to VIII. Thereafter the plaintiffs have included the other legal representative also as proposed defendant No.2(c) and filed applications under I.A.No.IX to XI. Thereafter the defendants have not submitted any objection.

3. The following points would arise for my consideration :

- i) Whether the right to sue survives in favour of LRs of deceased defendant No.2 ?*
- ii) Whether the LRs of deceased defendant No.2 can be brought on record by condoning the delay and setting aside the abatement ?*
- iii) What order ?*

4. My answer to above points are as under :

Point No.1 : In the Affirmative.

Point No.2 : In the Affirmative.

**Point No.3 :As per final order
for the following:**

REASONS

5. **Point No.1 and 2 :** In order to avoid repetition both the points are discussed together. Plaintiffs have filed this suit for the relief of declaration and permanent injunction against the defendants. Defendant No.2 died on 10.08.2018. Since the suit is for declaration and permanent injunction the right to sue survives even after death of the defendant No.2. Where the defendant dies the right to sue survives and it can be continued against the L.Rs of deceased defendant. The defendant No.2(a) to (c) being the surviving LRs of the deceased defendant No.2, the plaintiffs have got right to proceed against the LRs of defendant No.2 and it is necessary to bring them on record to avoid multiplicity of proceedings. The applications cannot be rejected only on the ground that the

applications are filed belatedly. Delay is not the ground for rejection of the applications in suits for declaration and permanent injunction. Hence, this court comes to the conclusion that the said LRs of defendant No.2 are to be brought on record by setting aside the abatement and condoning the delay. Hence, I answer **Point No.1 and 2 in the Affirmative.**

6. Point No.3 : For the above said reasons, I proceed to pass the following :

ORDER

The applications i.e., I.A. No.VI to XI filed U/O.XXII Rule 4 R/w. Sec.151 of C.P.C., U/O.XXII Rule 9 R/w. Sec.151 of C.P.C. and U/Sec.5 of limitation Act are hereby allowed.

The LR's of defendant No.2 as mentioned in the aforesaid applications, are permitted to be brought on record as defendants No.2(a) to (c).

Counsel for plaintiffs is hereby directed to carry out

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***amendment and to file amended
plaint accordingly.***

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