

ORDERS ON I.A. 8

The plaintiff has filed I.A. No.8 U/o XXII Rule 4, U/order XXII Rule 9 R/w Sec. 151 of CPC and Sec. 5 of Limitation Act to bring the legal heirs of deceased defendant no.4 on record and by setting aside the order of abatement and by condoning the delay if any in the interest of justice and equity.

2. In the affidavit the plaintiff stated that, they have filed this suit for the relief of permanent injunction against the defendants in respect of suit property. During the pendency of the suit the advocate of defendant reported as per memo dated 21-02-2024 that the defendant no. 4 has expired on 13-02-2021 at Bekkinkeri after that the plaintiff enquired about the legal heirs of deceased defendant no. 4 to take steps. After enquiry the plaintiffs came to know that the defendant no. 4 died leaving behind his legal heirs as defendant no. 4.1 to 4.5. After death of defendant no. 4 the cause of action and right to sue does survive against the proposed legal heirs. Therefore, the plaintiff has to be permitted to amend

the cause title of the plaint. Till filing of memo by the counsel for defendant, the plaintiff are not aware about the death of defendant no.4 and his legal heirs. Further the counsel for defendant not informed about the death of defendant no. 4, the defendant no. 4 is stranger to the family of plaintiff. Due to lack of knowledge of death of defendant no. 4, two years 10month delay has been caused, the delay in filing application to bring legal heirs of deceased defendant no. 4 on record is not deliberate and intentional. Therefore the delay has to be condoned by setting aside the abatement. With these contentions the plaintiff prayed to allow the application.

3. In spite of service of notice, the LR's of deceased defendant no.4 not appeared before the court.

4. Heard the learned counsel for plaintiff and perused records, the plaintiffs have filed this suit for the relief of permanent injunction alleging that they are the owners in possession of the suit property and on 23-02-2018 the defendants have interfered, disturbed and obstructed the peaceful possession, use and enjoyment of plaintiffs over the suit property illegally. As such, the plaintiff no. 1 has

lodged complaint against the defendants before Kakati Police station. However, in spite of registration of complaint the police have not initiated enquiry and not taken action against the defendants. These contentions of the plaintiffs in the plaint shows that the plaintiffs are specifically alleged that the defendant no. 1 to 4 have interfered with their possession on 22-02-2018. Now the defendant no. 4 died. As the plaintiffs specifically pleaded against the defendant no. 4 about interference by him over enjoyment of the suit property cause of action does not survives to his legal heirs after his death. The legal heirs of defendant no. 4 have not interfered personally with possession of the plaintiff over the suit property. Therefore, there is no cause of action to continue the suit against them. Therefore, the plaintiffs have not made out grounds to allow the application. Accordingly this court proceed to pass the following:-

ORDER

I.A. No.8 filed by plaintiffs

U/o XXII Rule 4, U/order XXII

Rule 9 R/w Sec. 151 of CPC and

Sec. 5 of Limitation Act is hereby rejected.

The cause of action does not survive against the legal heirs deceased defendant No.4.

For amendment and amended plaint.

Call on 24-10-2024

Sd/-

**(Geeta)
IV Addl. Civil Judge & JMFC.,
Belagavi.**