

KABG040009092017



06.01.2025

O.S.No.343/2017

### **COMMON ORDERS ON I.A.NO.VIII TO X**

These applications are filed U/O. XXII Rule 3 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 to bring the L.Rs of plaintiff No.3 on record. In the affidavit accompanying the application, it is stated that the plaintiff No.3 died on 15.01.2023, leaving behind her husband and children as her legal representatives and hence they may be permitted to come on record and to condone the delay in filing application to set aside the abatement and to set aside the abatement. It is also stated that the presence of said legal heirs is very much

necessary in this suit as their rights are also involved in the suit.

2. The defendants have not filed any objections to the said applications.

3. The following points would arise for my consideration :

*i) Whether the right to sue survives in favour of LRs of deceased plaintiff No.3 ?*

*ii) Whether the LRs of deceased plaintiff No.3 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 partition and separate possession and consequential relief of permanent injunction. Plaintiff No.3 died on 15.01.2023. Since the suit is for partition and separate possession and permanent injunction the right to sue survives even after death of the plaintiff No.3. Where the plaintiff dies the right to sue survives and it can be continued by the LRs of the deceased plaintiff. The plaintiff No.3(a) to (d) being the surviving LRs of the deceased plaintiff No.3, they have got right to proceed with case and it is necessary to allow them to come on record to avoid multiplicity of proceedings. These 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 partition and separate possession and permanent injunction. Hence, this Court comes to the conclusion that the said LRs of plaintiff No.3 are to be allowed to come 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 :

**O R D E R**

*The applications i.e., I.A. No.VIII to X filed U/O.XXII Rule 3 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 plaintiff No.3 i.e., plaintiff No.3(a) to (d) as per the aforesaid applications, are permitted to come on record as plaintiff No.3(a) to (d).*

*Counsel for plaintiffs is hereby directed to carry out amendment and to file amended plaint accordingly.*

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