

KABG040001092020



28.11.2023

O.S.No.53/2020

ORDERS ON I.A.Nos.IV TO VI

The counsel for the proposed plaintiffs has filed the application U/O.XXII Rule 3 R/w. Sec.151 of C.P.C. to bring the legal heirs of the deceased plaintiff on record, the application U/Sec.5 of the Limitation Act to condone the delay in filing the application to set aside the abatement and also filed the application U/O.XXII Rule 9 R/w. Sec.151 of C.P.C. seeking to set aside the abatement.

2. In the affidavits annexed to the applications, the proposed plaintiff No.1(b) has stated that the deceased plaintiff i.e., his grandmother died on 08.05.2022 leaving behind him and his mother as her only legal heirs. Further stated that his father Anil Shankar Kamble died on 22.01.2001 and after the death of his father, he and his mother were residing with the original plaintiff in the suit property. Further it is stated that as he was busy in his day-

today's work, he could not contact his advocate in time and not instructed his advocate about the death of his grandmother in time. Therefore, there is delay of six months six days in filing the application to bring the LR's of plaintiff on record. If the present applications are not allowed, the proposed plaintiffs will be put to heavy loss and on the contrary if the applications are allowed the defendants will not be put to any loss or hardship. Hence prayed to set aside the abatement by condoning the delay if any and permit the proposed plaintiffs to come on record.

3. In spite of sufficient opportunities, the defendants failed to file their objections. Hence objections to the applications is taken as nil.

4. The plaintiff has filed the suit for the relief of permanent injunction against the defendants. Even after the death of the said plaintiff, the cause of action for this suit survives if there is continuation of interference by the defendants. Nothing is forthcoming as the same in the affidavit and the defendants have also not objected the applications. In the present case, the plaintiff Nos.1(a) and 1(b) being the surviving legal heirs of the deceased plaintiff have got right to submit their say in the suit. As such, the legal heirs of the plaintiff are necessary parties to the suit for the proper adjudication of the matter and to avoid multiplicity of proceedings. The applications cannot be rejected only on the ground that the applications are filed

belatedly. Hence, bringing the legal heirs of the deceased plaintiff on record is necessary by setting aside the abatement and condoning the delay. Hence, I proceed to pass the following:

ORDER

The I.A.Nos.4 to 6 filed U/O.XXII Rule 3 R/w. Sec.151 of C.P.C., U/Sec.5 of the Limitation Act and U/O.XXII Rule 9 R/w. Sec.151 of C.P.C. are hereby allowed.

The counsel for the plaintiffs is hereby directed to carry out amendment and to file amended plaint.

No order as to costs.

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

Call on 11.12.2023.

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