

KABG040021902019



30.07.2026

O.S.No.852/2019

COMMON ORDERS ON I.A.NO.III TO V

These applications are filed U/O. XXII Rule 2 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.

2. In the affidavits accompanying the applications, the plaintiff No.47 has stated that the defendant No.1 has expired on 06.12.2021, leaving behind her children as her legal representatives i.e., proposed defendants No.1(a) to 1(d) mentioned in the applications. That the legal heirs of defendant No.1 are to be brought on record in view of death of defendant No.1 since their presence is very much necessary in the suit. On these grounds,

the plaintiffs have prayed to allow the applications.

3. Despite sufficient opportunity being given, the defendants have not filed objection to the said applications.

4. The following points would arise for my consideration :

i) Whether the right to sue survives against LRs of deceased defendant No.1 ?

ii) Whether the LRs of deceased defendant No.1 can be brought on record by condoning the delay and setting aside the abatement ?

iii) What order ?

5. 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

6. **Point No.1 and 2 :** In order to avoid repetition both the points are discussed together. The plaintiffs have filed this suit for

the relief of declaration and injunction against the defendants. The defendant No.1 died during pendency of suit. Since the suit is for declaration and injunction, the right to sue survives even after death of the defendant. Where the defendant dies the right to sue survives and it can be continued against the LRs of deceased defendant. The defendants No.1(a) to 1(d) being the surviving LRs of the deceased defendant, the plaintiffs have got right to proceed against the LRs of defendant No.1 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 injunction. Hence, this Court comes to the conclusion that the said LRs of defendant No.1 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.**

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

ORDER

The applications i.e., I.A.No.III to V filed U/O.XXII Rule 2 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 LRs of defendant No.1 as mentioned in the aforesaid applications, are permitted to be brought on record as defendants No.1(a) to 1(d).

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

(Smt. Preeti L. Malavalli)
Prl. Civil Judge & JMFC, Belagavi.

To carryout amendment and to file amended plaint as per orders on I.A.No.III to V by

(Smt. Preeti L. Malavalli)
Prl. Civil Judge & JMFC, Belagavi.