

ORDERS ON I.A.I, II AND IV FILED U/O. I RULE 10 R/W. SECTION 151 OF CPC

I.A. Nos.1, 2 and 4 filed by the petitioner with a prayer to implead the proposed respondent Nos. 19 to 27 as per list annexed to the application.

2. Said applications are accompanied with an affidavit sworn by the petitioner No.1, wherein it is stated that that the present FDP filed for drawing up of the final decree of their 1/15th share in the suit properties. After the issuance of the notice, the bailiff reported that the respondents Nos. 13 has expired leaving behind him his wife and two sons and the respondent 15 expired leaving behind his wife and two sons and the respondent No.15 expired leaving behind her one daughter as Class-I legal heir. Further the respondent No.14 expired leaving behind their legal heirs. The proposed respondents Nos. 19 to

21 and are the legal heirs of deceased respondent No.13 and the proposed respondent No.22 is the legal heir of deceased respondent No.15. He made enquiry about the legal heirs of deceased respondents and filed the present applications to implead the proposed respondent Nos. 19 to 27. If the accompanying application is allowed, no loss would be caused to other side. Hence, prayed to allow the application.

3. The said application is resisted by the respondent Nos. 20 by filing common objections to the said I.As, wherein they have denied the contents of the application as false and contended that the respondent Nos. 13 and 14 were expired during the pendency of the suit bearing O.S. No.831/2007 leaving behind the proposed respondents as their Lrs. But, the petitioners knowing fully that the respondent Nos. 13 and 14 are expired did not bring their Lrs on record. Therefore, the judgment passed in the said suit without impleading the Lrs of respondent Nos. 13 and 14 is null and void. Further contend that the proposed respondent Nos. 26 and 27 are minors. But, without appointing the guardian, the notice has been issued to respondent Nos. 25 to 27 which is totally illegal. Further it is contended that one Vimal wd/o. Laxman Sidbache is died on 06.07.2020, but she was not party to the alleged suit in O.S. No.831/2007 Further at no point of time her mother was made party to the suit, therefore in this FDP proceedings

the proposed respondent No.22 cannot be impleaded as party to the proceedings, the alleged judgment and decree passed against one fictitious person without having full name alleged to be Vimal Satawache as alleged to be died leaving behind proposed respondent No.22 cannot be called as legal heirs of alleged Vimal Satawache. Further it is contended that the petitioner knowingly well the death of said persons, their legal heirs have been not brought on record. Hence, the suit O.S. No.831/2007 is abated against the deceased defendant Nos. 13 and 14, hence the application is not maintainable. Hence, prayed to reject the applications.

4. Heard the arguments .

5. The following points arise for consideration

Point No.1: Whether the petitioner has made out grounds to allow the applications?

Point no.2: What order?

6. My answer to the above points are as follows:-

Point No.1: In the Affirmative

Point no.2: As per the following

REASONS

6. The petitioners have filed the present application seeking to bring the Lrs of respondent Nos. 13 to 15. The petitioner contend that the present petition is filed to drawn up of the final decree of their 1/15th share in the suit properties as per decree passed by this Court. After the issuance of notice, the bailiff reported that the respondent Nos. 13 to 15 expired prior to filling of the petition. On enquiry, they came to know that the proposed respondents are the Lrs of respondent Nos. 13 to 15 as detailed in I.A. Nos. 1,2 and 4 respectively. Further contend that they are the proper and necessary parties for effective disposal of the present petition. The petitioner contend that the respondent Nos. 19 to 23 are the Lrs of respondent No.14. The respondent No.22 is the Lrs of respondent No.15. The Lrs of respondent No.13 appeared before the Court through his counsel and filed objections and Lrs of respondent Nos. 22 to 27 appeared through the counsel and filed objections. Inspite of service of notice, the proposed respondent No.22 did not appear before the Court.

7. The counsel appearing for the respondent Nos. 22 to 22 filed memo stating that respondent No.19 is expired. The petitioner filed

memo stating that the Lrs of respondent No.19 are the proposed respondent Nos. 20 to 22.

8. The counsel for the respondent Nos. 20 to 22 and 23 to 27 have filed objections, wherein contended that the respondent Nos. 13 and 14 were expired during the pendency of the suit bearing O.S. No.831/2007 leaving behind the proposed respondents as their Lrs. But, the petitioners herein knowing fully that the respondent Nos. 13 and 14 are expired did not bring their Lrs on record. Therefore, the judgment passed in the said suit without impleading the Lrs of respondent Nos. 13 and 14 is null and void. Further contend that the proposed respondent Nos. 26 and 27 are minors. The petitioner counsel argued that the respondent No.13 to 15 were placed exparte. Further whether the decree is null and void and cannot be executed against the Lrs of respondent Nos. 13 and 14 cannot be considered at this stage in the present application. Said contention can be taken by the proposed respondents after impleading them as parties in the present petition. The counsel for the proposed petitioners relied on the following decisions:

- 1) AIR 2018 SC 490
- 2) AIR 2000-(3)_ KAR L.J 450
- 3) ILR 1991 KLR 3985

and contended that the present application filed Under Order 1 Rule 10 of CPC is maintainable. Further relied on the decision and contend that this court has inherent power to add to the suit necessary parties at any stage of suit in order to effectively and completely adjudicate upon and settle of questions involved in the suits.

9. The counsel for the proposed petitioners relied on the following decisions:

1) 2014 (4) AIR 630

2) 2020 (2) Civil L.J 56 Patna High Court

3) AIR 2017 Supreme Court 2419

and contended that death of defendant during the pendency of the suit, no application filed to bring the legal representatives on record, the decree passed against the deceased defendant would be nullity.

10. The first contention of the respondents that the respondent No.24 and 27 are the minors. Therefore, the notice cannot be issued to them. It is pertinent to note that the petitioner had filed the application seeking appointment of proposed respondent No.23 as minor guardian to proposed minor respondent Nos. 26 and 27. The proposed respondent No.3 is already appointed as minor guardian to the proposed respondent Nos. 26 and 27. The proposed respondent No.23 is already represented by the counsel. Hence, the said contention of

the proposed respondents cannot be accepted. Further the another contention of the proposed respondents that the respondent Nos. 13 and 14 were expired during the pendency of the suit bearing O.S.No.831/2007 and their Lrs are not brought on record. Therefore, the said judgment and decree is null and void and not bining. It is pertinent to note that at this stage at this stage, while deciding the present application the said contention of the proposed respondents cannot be considered for dismissal of the present applications. The decision relied on by the proposed respondent is not applicable while deciding the present application. They can take the said contention after impleading themselves as respondents in the present suit. Further it is pertinent to note that it is not in dispute that the proposed respondents are the Lrs of respondent Nos. 13 to 15. Admittedly, Hence, the proposed respondents are proper and necessary parties. Hence, application deserves to be allowed. Accordingly, I proceed to pass the following;

ORDER

IA.No.I, II and IV filed by the petitioner Under Order 1 Rule 10 r/w. Section 151 of CPC are hereby allowed.

**The proposed respondent Nos. 20 to 27 are
impleaded as parties in the present petition.**

**To carry out amendment and amended petition
by**

**IV Addl. Civil Judge & JMFC.,
Belagavi.**