

ORDER ON I.A No.2 to 5

I.A.No.2 is filed by the applicants/plaintiffs U/O 22 Rule 1 and 2 of CPC. to set aside abatement caused in the bringing the legal representatives of deceased defendant No.2 on record.

2. The applicant/plaintiffs have filed I.A.No.3 U/O.22 Rule 4 of CPC. praying permission to bring the legal heirs representatives of deceased defendant No.2.

3. The applicants/plaintiffs filed I.A. No. 4 under section 5 of limitation Act, to condone the delay caused in bringing the legal representatives of deceased defendant No.2 on record.

4. The applications are supported with affidavits of applicant namely Smt. Shashikala duly sworn. She has stated that the defendant No.2 was passed away leaving behind the proposed defendant No.2 (a) to (f) as his legal heirs and right to sue is survived on him. It is further sworn that proposed legal representatives are the proper and necessary parties in this suit. It is further sworn that there is a delay in filing an application for bringing the LRs on record due to death her elder brother defendant No.2 she was suffered mental agony, as such she could not filed applications to bring the LRS in time. Hence, there is a delay caused in filing the application. The delay is neither intentional nor deliberate. If these applications are allowed no harm or injury will be caused to the defendants, otherwise the plaintiffs will be put to hardship. Hence prayed to allow the applications.

5. The proposed defendants have not appeared in spite due service of notices.

6. Heard. Perused.

7. According to Order 22 Rule 3 of CPC. when the deceased defendant No.2 passed away leaving behind his legal representatives and if the right to sue survives on him. According to Art.120 of Limitation Act, an application for bringing the legal representatives of deceased defendant No.2 has to be filed within 90 days from the death of deceased defendant No.2. If at all the application for bringing the legal representative of the deceased defendant No.2 is not filed within 90 days, automatically suit will be abated as far as the deceased defendant No.2 is concerned. According to Order 22 Rule 9 of CPC. an application can be filed for setting aside the abatement and according to Art.121 of Limitation Act, even after suit is abated an application has to be filed within 60 days from the date of abatement for setting aside the abatement.

8. On careful perusal of the records and applications, the defendant No.2 passed away and also admitted that the proposed defendants are the legal heirs of the deceased defendant No.2. Inordinate delay is not purposely, but bona fide one. Hence, it is not sufficient to hold that the proposed defendants are the legal representatives of deceased defendant No.2. The scope of provision of Order 22 Rule 4 of Civil Procedure Code it is enough to bring the LRs of the deceased plaintiff to proceed the matter. Under the facts and circumstances of the case, to bring the legal representative of deceased defendant No.2 is necessary. Hence, I am of the opinion that applicants is able to make out ground for allow the applications filed for bringing the legal representatives of deceased defendant No.2 on record and also made out grounds for setting aside the abatement. It is well settled principles of law that substantial justice should not be denied merely for the technical reasons. Hence, I.A.No.2 to 4 are liable to be allowed. Therefore for the above reasons, I proceed to pass the following:

ORDER

I.A.No.2 filed by the applicant U/o. 22 Rule and 2 of CPC. I.A.No.3 is filed by the applicant U/O.22 Rule 4 of CPC, and I.A.No.4 is filed by the applicant U/Sec. 5 of limitation Act are hereby allowed with cost of Rs. 300/-

Senior Civil Judge, Bailhongal.

Order on I.A. No.5

Plaintiff have filed IA-5 under order 32 rule 1 of CPC. to appoint Shila W/o Shivappa Toragall the mother of defendant No. 2(d) to (f) as natural guardian of them for the purpose of this case. In the affidavit filed in support of the application plaintiff No.2 has stated that, she filed the present suit for partition and separate possession and during the pending of this suit her brother

defendant No.2 passed away on 21-11-2022 leaving behind him first wife namely defendant No.2(a) and second wife one Shila the mother of proposed defendant No 2(c) to (f). Amongst these proposed defendant No.2 (d) to (f) are the minor. Hence she may be appointed as natural guardian of minor proposed defendant No.2(d) to (f).

Admittedly, Shila W/o Shivappa Toorgall is the natural mother of the proposed minor defendant No. 2 (d) to (f). Hence she being natural mother is a fit lady to safe guard the interest of her minor children i.e., proposed defendant No.2 (d) to (f). Therefore this court deems fit to pass the following:

ORDER

IA No.5 filed under order 32 Rule 1 of CPC. by the plaintiffs is hereby allowed.

The natural mother of proposed defendant No.2(d) to (f) namely Shila W/o Shivapp Toorgall is appointed as guardian of minor proposed defendant No.2(d) to (f) for the purpose of the suit.

Plaintiffs are hereby directed to amend the cause title and to furnish amended plaint and cost by 2-8-2024.

Senior Civil Judge, Bailhongal.