

ORDER ON I.A.

The applicant / plaintiff No. 5 has filed this I.A. U/O. XXII Rule 4(4) R/w. Sec. 151 of the CPC praying to permit to exempt the plaintiffs No. 5 to 8 from the necessity of substituting the legal representatives of the deceased defendant No. 11.

2. In the affidavit filed in support of this I.A., the applicant has mainly stated that the defendant No. 11 has died on 23-11-2015 as stated in the memo filed by the defendants No. 1B, 9 and 10, but the plaintiffs were not aware about the death of defendant No. 11 as they have been recently impleaded and only after filing the said memo of death of defendant No. 11, the plaintiffs came to know about the death of defendant No. 11.

3. It is further stated that though the suit summons was duly served upon the defendant No. 11, he has not appeared in this case. There is no necessity to bring his legal representatives on record. On these main grounds, the applicant has prayed for allowing this I.A.

4. Per-contra, the defendants No.1B and 8 to 10 have filed the objections praying to reject this I.A. on the main grounds that the provision of exempting the plaintiffs from impleading the legal representatives of deceased defendant No. 11 is not mandatory on the part of the Court. The defendant No. 11 is impleaded as a necessary

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party whose death is already intimated. Therefore, if the plaintiffs are ready to take a risk of mutual consequences in default of bringing the legal representatives of deceased defendant No. 11, they are at liberty to do so at their risk. Moreover, this suit against the defendant No.11 is already abated. It is incorrect to say that the plaintiffs No. 5 to 8 had no knowledge about the death of defendant No. 11 and hence, they recently came to know about the death.

5. Heard and perused the case records.

6. Now, the only point that arises for my consideration is ***“Whether this I.A. deserves to be allowed ?”***

7. My finding on the above point is in the AFFIRMATIVE for the following :

REASONS

8. It is not in dispute that the defendant No. 11 has died on 23-11-2015 who has been impleaded as one of the necessary parties in view of the certification of the mutation entries in his name along with the other defendants No. 7 to 10 and 12 to 15 as contended in the plaint. As per the provisions of order XXII Rule 4(4) of the CPC as amended in Karnataka State, the Court may exempt the plaintiff from the necessity to substitute the legal representatives of a defendant who has been declared as exparte or who has failed to file his written

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statement or who, having filed it, has failed to appear and contest the suit at the hearing and the judgment may, in such case, be pronounced against the such defendant notwithstanding the death of such defendant and the judgment shall have the same force and effect as if it has been pronounced before death took place.

9. Admittedly, in the case in hand, the defendant No. 11 has been declared as exparte as per the order dated 23-11-2001 in this suit. What it goes to show is that the defendant No. 11 has not filed the written statement nor has contested this suit. Though exempting the plaintiff from the necessity to substitute the legal representatives of deceased defendant who has been declared as exparte or who has not filed the written statement and has failed to appear and contest the case is not mandatory, but these provisions of law empower the court to exempt the plaintiff from the necessity to substitute the legal representatives of deceased defendant No. 11. In the objection, it is not stated as to why the impleadment of legal representatives of deceased defendant No. 11 is necessary in this case, but in the objection, the defendants No.1B and 8 to 10 have shifted the risk of not impleading the legal representatives of deceased defendant No.11 on the plaintiffs. Even the legal representatives of deceased defendant No. 11 have not minded to appear in this case.

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Therefore, in view of the Order XXII Rule 4(4) of the CPC, the plaintiff may be exempted from the necessity to substitute the legal representatives of deceased defendant No. 11 who has been declared exparte and who has failed to file the written statement. Therefore, this I.A. deserves to be allowed. Accordingly, I answering the above point in the AFFIRMATIVE proceed to pass the following :

ORDER

i) This I.A. filed by the applicant / plaintiff No. 5 U/O. XXII Rule 4(4) R/w. Sec. 151 of the CPC stands ALLOWED.

ii) As a result, the applicant is exempted from the necessity to substitute the legal representatives of deceased defendant No. 11 in this suit.

iii) No order as to cost.

(Dictated to the Stenographer, transcribed and typed by him and corrected, signed and then pronounced by me in the Open Court on this the 17th day of September - 2019)

**Prl. Senior Civil Judge,
Chikkodi.**