

**: ORDERS ON IA NO. 3 TO 5 :**

Learned counsel for plaintiff has these applications U/o 22 rule 3 R/w sec.151 of CPC, U/o 22 rule 9 R/w sec. 151 of CPC and U/Sec. 5 of Limitation Act for

i) an application to bring on record, the LR's of deceased plaintiff in the suit.

ii) an application to set-aside the abatement order.

and

iii) an application to condone the delay in filing the application to set-aside the abatement;

2. In support of these applications, proposed plaintiff No.1(b) has sworn to affidavits and stated that, he is deposing on behalf of proposed plaintiff No.1(a), 1(c) and 1(d) also. Plaintiff No.1 died on 27.04.2021 leaving behind his wife and 3 sons as his only legal heirs and their names are shown in the applications as proposed plaintiff No.1(a) to (d). It is submitted that, plaintiff had filed this suit against defendant for the relief of permanent injunction in respect of the suit property. Cause of action and right to sue survives in favour of LR's of deceased plaintiff No.1 and against the defendant. There are no other legal representatives apart from these applicants to the deceased. It is submitted that, they did not know about the pending litigation and as soon as they got to know about the litigation, they filed the present applications and as such there is delay of 127 days in filing the present applications. It is submitted that, the delay is bonafide

and not intentional one. If the applications are allowed, no harm or loss will be caused to the other side and on the contrary, if the applications are not allowed, they will be put to irreparable loss and injury. Hence, prayed to allow the applications.

3. Learned counsel for defendant has filed objection to the said applications contending that, suit property was a shop premises and during the pendency of the suit, after the request of defendant, the plaintiff along with other neighbors who had constructed shop adjacent to high way were dispossessed and now the suit property is vacant and neither plaintiff nor his LR's are in possession of the same. Moreover, after the death of plaintiff, suit for bare injunction does not survive against the defendants. Hence, prayed to reject the applications with cost.

4. Heard and Perused.

5. The suit is filed by plaintiff for permanent injunction against defendant. It is submitted that, plaintiff No.1 died on 27.04.2021 leaving behind his LR's i.e., proposed plaintiff No.1(a) to (d) who are his wife and three sons respectively. They are having interest in the suit. Apart from that, right to sue survives in the LR's of deceased plaintiff No.1. The date of death of plaintiff No.1 is 27.04.2021. The present application is not filed within the time limited by law. As such the applicants have filed I.A No.4 & 5 seeking to set aside abatement order passed against deceased plaintiff and to condone the delay in filing the applications. The delay in filing the present applications is explained by the applicants and it seems to be bonafide and not intentional one. However, the contentions taken by defendant can be looked into at

the trial and right to sue survives in the LR's of deceased plaintiff. Hence, to advance the cause of justice and to afford opportunity, it is just and proper to allow the applications and permit the proposed plaintiff No.1(a) to (d) to come on record as plaintiff No.1(a) to (d). Hence, I proceed to pass the following:

**ORDER**

I.A. No. 3 to 5 filed by the applicants are hereby allowed.

Accordingly, the delay in filing the applications is condoned by setting aside the abatement order and proposed plaintiff No.1(a) to (d) are permitted to come on record as plaintiff No.1(a) to (d).

It is hereby directed to carry out amendment and furnish amended plaint.

For Amended and amended plaint

Call on: 21.05.2022

**Sd/-**

Civil Judge & JMFC, Banahatti.