

ORDERS IA NO.V to VII

L/C for plaintiff filed these applications U/o.22 rule 4 of CPC, U/o.22 rule 9 of CPC and U/sec.5 of Limitation act for

1. an application to bring on record, the LR's of the deceased defendant No.17 in the suit.
 2. an application to set-aside the abatement order.
 3. an application to condone the delay in filing the application to set-aside the abatement; and
2. Plaintiff No.3 has sworn to affidavits in support of I.A. No.5 to 7 and stated that, plaintiffs have filed this suit for Partition and Separate possession. During the pendency of this suit, defendant No.17 died on 23-01-2016 leaving behind the persons named in the application as his only LRs. Except the said persons, there are no any legal heirs to deceased defendant No.17. Hence, it is necessary to bring on record the LRs of deceased defendant No.17 in the suit by setting aside the abatement order. The LRs of deceased defendant No.17 could not be brought on record within the prescribed time due to the pandemic. In the mean while case against defendant No.17 is abated. It is necessary to bring on record his LRs for effecting adjudication of this case.
3. Notice of IAs was issued to proposed defendant No.17(a) and (b). The notice was served to proposed defendant No.17(a) and he appeared through his counsel and submitted no objection to allow the application. Though notice of IAs is served to proposed defendant No.17(b), he did not appeared before the court and remained absent.
4. Heard and Perused.
5. The suit is filed by the plaintiff for partition and separate possession. It is reported that, defendant No.17 died during the pendency of this suit i.e., on 23-01-2016 leaving behind the proposed defendant No.17(a) and (b). The present applications are filed on

21-02-2022. There is a huge delay in filing the present applications. The delay is not properly explained by the plaintiffs. However, in a partition suit, all the parties to the alleged joint family have to be brought on record for proper adjudication of the case on merits and hence the applications filed by the plaintiff deserves to be allowed. The delay in filing the same can be condoned by imposing cost. However, the reasons for delay explained in the applications appears to be bonafied and not intentional one. To advance the cause of justice and to afford opportunity to both parties, IA No.5 to 7 are hereby allowed. Accordingly, I proceed to pass the following:-

ORDER

I.A. No.V to VII filed by plaintiffs are hereby allowed on cost of Rs.300/- each.

Accordingly the delay in filing the applications is condoned, set-aside the abatement order and plaintiffs are permitted to add proposed defendant No.17(a) and (b) as defendant No.17(a) and (b).

The plaintiffs have to carryout the necessary amendment to the plaint and to furnish Amended Plaint.

For Amendment and Amended Plaint by 16-11-2022.

Sd/-
Civil Judge & JMFC., Banahatti