

O.S.210/2012

ORDERS ON I.A. No.10 to 15

These six applications have been filed by the plaintiff. The I.A. No.10 and 13 are filed Under order 22 R.4 of C.P.C to implead the legal representative of deceased defendant as defendant No.1 (a to f). I.A. No.-11 and 14 are filed under order 22 R.9 of C.P.C to set aside the order of abatement. I.A. No. 12 and 15 are filed under Section 5 of Limitation Act to condone the delay which has occasioned in preferring the LR's applications.

2. The plaintiff has sworn an affidavit stating that the Defendant passed away on.24.10.2020 leaving behind him proposed deceased defendant as defendant No.1 (a to f). the suit filed against the Defendant for the relief of permanent injunction. The cause of action is survive against the LR's of deceased Defendant. If the applications are not allowed, he will be put to more hardship and injury. Hence, sought to allow the applications.

3. Neither the proposed defendants have filed objections to the applications after receipt of notice.

4. The following point arises for determination.

- 1) Whether the plaintiff has satisfied that the applications at I.A. No. 10 to 15 are deserved to be allowed?

5. I have heard the arguments, perused the entire materials available on record.

6. My finding to the above point is in the affirmative for the following-

REASONS

POINT No.1: This is a suit for the relief of permanent injunction. It is well settled position of law that to bring the LR's if there is a delay then the court should take liberal view in condoning the delay. It was argued that, he was not aware about the details of legal representatives of deceased defendant and recently he came to know about the details. Here the proposed defendant No.1 (a to f) have not appeared before the court. Thus, the right to file objection to these IA's was forfeited.

The Plaintiff in the plaint stated that Defendant and their relative be restrained from interfering with the enjoyment of the western side Wall of the Plaintiff house i.e., but plastering, painting and cleaning etc., in respect of suit property. The word "relatives" referred in the plaint can be inferred that the Plaintiff is seeking relief not only against the Defendant but also against his family members i.e., "relatives". Therefore, the cause of action survive against the family members of the Defendant. As I have said the court has to take liberal view and furthermore, if the suit decided in absence of proposed defendants, who are necessary party to the suit, then it will adversely affect the interest of the plaintiff and also the proposed defendant No.1 (a to f). Hence, Court answer the point no.1 in the affirmative and proceed to pass the following-

ORDER

I.A. No. 10 to 15 filed by the plaintiff Under order 22 R.4, 22 R.9 and sec.5 of Limitation Act to bring LR's of defendant are allowed. Thereby, the plaintiff is permitted to implead the proposed defendants as defendant No.1 (a to f).

The cause title of the plaint shall be amended accordingly.

To furnish amended plaint.

Call on. 05.07.2022.

Judge and JMFC.,

Addl. Civil

Challakere.