

**COMMON ORDERS ON I.A.No.5 TO 7 FILED BY
THE PLAINTIFF U/O. XXII R.4, U/O.XXII R.9 OF
CPC AND U/SEC.5 OF LIMITATION ACT**

The plaintiff has filed these 3 applications U/O XXII Rule 4, U/O.XXII Rule 9 of CPC and U/Sec. 5 of Limitation Act and pray this Court to implead the legal heirs of deceased defendant No.9 as defendant No.9[a] to 9[e] to this suit by setting aside the abatement order by condoning the delay in filing these applications.

2. This Court issued IA notices to the legal heir of deceased defendant No. 9 . In spite of service of notices, they did not appear before the Court. They remained absent.

3. I have heard Sri. N.S.S, Advocate on these applications.

4. The following points arise for my consideration:

1. Whether the plaintiff has assigned good reasons to implead the legal heirs of

deceased defendant No. 9 as parties to this suit?

2. Whether the plaintiff has assigned good reasons to condone the delay and thereby set aside the abatement order passed against defendant No. 9 ?

3. What order ?

5. My answers to the above points are as under:

Point No.1 : In affirmative

Point No.2 : In affirmative

Point No.3 : As per final order for the following:

REASONS

Point No.1 and 2: As these two points are interrelated, I take both the points together for common discussion to avoid repetition.

6. The plaintiff has filed this suit against the defendants seeking the relief of partition and separate possession of their 1/3rd share in half share of the suit schedule property by metes and bounds and for declaration that the documents created by the defendants with respect to the suit properties are not binding on him.

7. Now the case stands posted for taking steps against other defendants. During the pendency of the suit, on 30.04.2018 the defendant No.9 by name Krishnappa died. The plaintiff contends that the persons named in the application are the only legal heirs of deceased defendant No.9.

8. As per Article 120 of Limitation Act, necessary application has to be filed within 90 days from the date of death of the plaintiff or defendant as the case may be to bring the legal heirs of the respective parties on record.

9. If the same is not filed within the stipulated period, the suit against such dead person abates automatically. The legal heirs of dead person can approach the Court within 60 days from the date of abatement order to get the order set aside and to implead themselves as the legal heirs of deceased party. If the same is not filed within 60 days, the parties can file necessary application U/Sec. 5 of

Limitation Act by assigning reasons to condone the delay in filing necessary applications.

10. In this case, admittedly the defendant No.9 died on 30.04.2018. These applications came to be filed on 05.03.2019. The plaintiff ought to have filed necessary applications within the stipulated period. However, he did not do so. The present applications came to be filed on 05.03.2019. Therefore, there is delay in filing these applications.

11. The plaintiff was not aware of the death of defendant No. 9. He came to know about the death of defendant No. 9 only when he visited his village. Hence, he could not file necessary applications in time. Order XXII Rule 1 of CPC says that the death of plaintiff or defendant shall not cause the suit abatement if the right to sue survives.

12. In this case though the applications are filed after a lapse of many months, the claim against the defendant No.9 will not abate, because, the right to sue survives on his legal heirs.

13. There is no material on record to disbelieve the reasons assigned by the plaintiff. Hence, the legal heirs of the defendant No. 9 become necessary parties. In their absence, the Court cannot proceed further in the matter. Moreover the right to sue survives on the legal heirs of the deceased defendant no. 9 and hence the suit against the defendant No. 9 does not abate.

14. Therefore, it is just and proper to condone the delay in filing these applications and to implead the legal heirs of the deceased defendant No.9 as parties by setting aside the abatement order. By considering all these aspects, I answer point No. 1 and 2 in Affirmative.

Point No. 3: For the afore said reasons, I proceed to pass the following:

ORDER

I.A No. 5 to 7 filed by the plaintiff U/O XXII Rule 4, XXII Rule 9 of CPC and U/Sec. 5 of Limitation Act are hereby allowed.

The delay in filing these applications is hereby condoned. The abatement order is hereby set aside.

The plaintiff is directed to implead the legal heirs of deceased defendant No.9 as defendant No. 9(a) to 9(e) to this suit by suitably amending the cause title of the plaint.

To carry out amendment and to file amended petition call on 22.08.2019.

Senior Civil Judge & JMFC.,

Hiriyur