

ORDERS ON I.A.No.13 FILED BY THE
PLAINTIFFS U/O. XXII R.4 OF CPC

The plaintiffs have filed this application U/O. XXII Rule 4 of CPC and pray this Court to implead the legal heirs of deceased defendant No.4 as defendant No.4(a) to 4(c) to this suit.

2. This Court issued IA notices to the proposed defendants. In spite of service of notices, the proposed defendant No.4(a) to 4(c) did not appeared before the court and remained absent.

3. I have heard Sri.SKR Advocate on this application.

4. The following points arise for my consideration:

1. Whether the plaintiffs have assigned good reasons to implead the legal heirs of deceased

defendant No.4 as defendant
No.4(a) to 4(c) to this suit?

2. What order?

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

Point No.1 : In affirmative

Point No.2 : As per final orders for the following:

REASONS

Point No.1:

6. The plaintiffs have filed this suit against the defendants seeking the relief of declaration that, themselves and defendant No.16 to 29 are the lawful owners of the suit schedule properties and to declare that, the alleged will dtd.13.12.1971 in pursuance of sale deed dtd.31.12.2011 and GPA dtd.29.10.2009 are not binding on their rights and to direct the defendant No.1 to 15 and 30 to 34 to hand over the possession of the suit properties in their favour and grant consequential relief of permanent injunction.

7. Now the case stands posted for hearing on preliminary issues. During the pendency of the suit, the defendant No.4 by name Sri. Suresh S/o. Late Gurusiddanayaka died on 10.07.2021 leaving behind his wife and children to succeed to his estate.

8. The plaintiffs contend that the persons named in the application are the only legal heirs of deceased defendant No.4. 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.4 died on 10.07.2021. The present application came to be filed on 30.08.2021, which is well within the time of limitation. 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.

11. The claim against the defendant No.4 will not abate, because, necessary application is filed within the period of limitation and the right to sue survives on his legal heirs. Now by filing this application, the plaintiffs intend to

implead the legal representatives of deceased defendant No.4 as parties to this suit.

12. After the death of defendant No.4, the right to sue survives on his legal representatives. In their absence, the Court cannot proceed further in the matter. Therefore, it is just and proper to implead the legal representatives of deceased defendant No.4 as parties to this suit. By considering all these aspects, I answer point No.1 in partly Affirmative.

Point No. 2: For the aforesaid reasons, I proceed to pass the following:

ORDER

I.A No.13 filed by the plaintiffs U/O XXII Rule 4 of CPC is hereby allowed.

The plaintiffs are permitted to implead the legal heirs of deceased defendant No.4 as defendant No.4[a] to

4[c] to this suit, by suitably amending the cause title of the suit.

To carry out amendment and to file amended plaint. call on 26.10.2021

Senior Civil Judge & JMFC.,
Hiriyur