

ORDERS

The plaintiff counsel filed application U.O 22 rule 3 of CPC seeking permission to come on record of Lrs of deceased plaintiff Lokamma . It is contended that the mother of the applicants and wife of the applicant has filed the suit for partition and other reliefs. During pendency of suit the original plaintiff died and the applicants are the Lrs having right to continue the litigation the right to sue survives and therefore sought to allow the application.

The counsel for defendant no.1 filed objections contending that the application is not maintainable and relation ship stated is false and date of death of plaintiff is not stated and application is time barred and hence sought to dismiss the application.

Heard arguments.

The following point arise for consideration as under:

Point no.1:- whether the application filed U.O 22 rule 3 of CPC deserves to be allowed ?

My finding on the above point is in the affirmative for the following :

REASONS

Point no.1:- in this case the plaintiff by name Lokamma had filed suit for partition of her 1/5th share claiming that she is the daughter of one Puradappa who is the son of Chikkanna. The suit properties are the joint family and ancestral properties of her self and defendants. However during the pendency of the suit she stated to be dead on 13-2-2018. The death certificate is also produced. The application by the legal heirs of deceased Lokamma is brought on 23-3-2018. As per order 22 of CPC the application for bringing the Lrs has to be moved within 30 days in the date of death . In this case the death certificate is obtained on 27-2-2018 and hence it can be said that after obtaining death certificate , the application is moved within time. The next question is whether right to sue survives . In this case the plaintiff being the daughter of family of defendants has moved this court for the share and until and unless the share is decided , the applicants become the necessary party. The contention of defendants that relation is false, is a matter of evidence. Hence at this stage I find no grounds to dismiss the application. Hence I

answer the point no.1 in the affirmative and pass the following :

ORDER

The application filed U.O 22 rule 3 of CPC is hereby allowed

Applicants are permitted to come on record as legal representatives of deceased plaintiff . They shall amend the plaint and shall file amended plaint by 6-7-2018

Sr.Civil Judge & JMFC,
Hiriyur