

COMMON ORDERS ON I.A.No.9 TO 11
FILED BY THE PLAINTIFFS U/O. XXII R.4,
U/O.XXII R.9 OF CPC & U/ SEC.5 OF
LIMITATION ACT

The plaintiffs have 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.2 as defendant No.2[a] to 2[d] 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 heirs of deceased defendant No.2. In spite of service of notices, they did not appear before the Court and they remained absent.

3.I have heard plaintiffs' counsel on these applications.

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.2 as defendant No.2[a] to 2[d] to this suit?

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

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 orders for the following:

REASONS

Point No.1 & 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, declaration and permanent injunction. After the death of sole plaintiff, her legal representatives have brought on record. Now the case stands posted for cross examination of PW.2.

7. During the pendency of the suit, i.e., on 07.05.2020, the defendant No.2 by name Shankara Murthy died. The plaintiffs contend that the persons named in the application are the wife and children of deceased defendant No.2 and they are the only legal heirs of deceased defendant No.2.

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.2 died on 07.05.2020. These applications came to be filed on 13.01.2021. It means that, these applications are not filed within in the period of limitation. The plaintiffs contend that they could not approach their counsel and instruct them to file necessary application to bring the legal heirs of deceased defendant No.2 on record, due to the closure of the courts & imposition of lock down due to pandemic

COVID-19. After the death of defendant No. 2, the right to sue survives against his legal heirs.

11. Due to the spread of pandemic COVID-19, the Hon'ble High Court had issued notification for the closure of courts. The plaintiffs get benefit under that notification. The reasons assigned by the plaintiffs are believable. Hence, the legal heirs of defendant No.2 become necessary parties. In their absence, the Court cannot proceed further in the matter. Therefore, it is just and proper to implead the legal heirs of the deceased defendant No.2 as parties to this suit. 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. 9 to 11 filed by the
plaintiffs U/O XXII Rule 4, U/O.XXII

R.9 of CPC and U/Sec.5 of Limitation Act are hereby allowed.

The plaintiffs are permitted to implead the legal heirs of deceased defendant No.2 as defendant No.2[a] to 2[d] to this suit by suitably amending the cause title of the plaint.

To carry out amendment and to file amended plaint.

Sr. Civil Judge & JMFC.,
Hiriyur.

In view of the death of Smt.CAU, office to issue court notices to the plaintiffs. Call on 29.06.2021.

Sr. Civil Judge & JMFC.,
Hiriyur.