

ORDERS ON I.A.No.5 FILED BY THE
PLAINTIFS 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 wife of deceased defendant No.1 as defendant No.1(a) to this suit.

2. This Court issued IA notice to the wife of deceased defendant No.1. She appeared through the counsel and submitted no objection this application.

3. I have heard both the counsels on this application.

4. The following points arise for my consideration:

1. Whether the plaintiffs have assigned good reasons to implead the wife of deceased defendant No.1 as party to this suit?

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

Point No.1 : In affirmative

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

REASONS

Point No.25:

6. The plaintiffs have filed this suit against the defendants seeking the relief of partition and separate possession of their 7/16th share in the suit schedule property by metes and bounds. Now the case stands posted for cross-examination of PW.1.

7. During the pendency of the suit, the defendant No. 1 died on 09.05.2019 .

8. The plaintiffs contend that themselves and the person named in the application are the only legal heirs of deceased defendant No.1.

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.1 died on 09.05.2019. The present application came to be filed on 30.07.2019, which is well within the time of limitation.

11. 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. The claim against the defendant No.1 will not abate, because, necessary application is filed within the period of limitation and the right to sue survives on his legal heirs.

12. Except the wife , the other legal heirs defendant No.1 are already on record as plaintiffs. Now by filing this application the plaintiffs intend to implead their mother as party to the suit. After the death of defendant No. 1, the right to sue survives against his legal heirs. In their absence, the Court cannot proceed further in the matter. Moreover the right to sue survives on the legal heirs of deceased defendant No.1. Therefore, it is just and proper to implead the wife of deceased defendant No.1 as party to this suit. By considering all these aspects, I answer point No. 1 in Affirmative.

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

ORDER

I.A No. 5 filed by the plaintiffs
U/O XXII Rule 4 of CPC is hereby
allowed.

The plaintiffs are directed to
implead the wife of deceased
defendant No.1 as defendant No.
1(a) to this suit, by suitably
amending the cause title of the
plaint.

To carry out amendment and to
file amended plaint. call on
2.11.2019.

Senior Civil Judge & JMFC.,
Hiriyur