

**COMMON ORDERS ON I.A.No.2 FILED BY**  
**THE APPLICANTS U/O. XXII R.3 AND**  
**I.A.No.3 FILED BY THE PETITIONERS**  
**U/O.XXII R.4 R/W SEC.151 OF CPC**

The applicants have filed I.A.No.2 U/O. XXII Rule 3 and pray this Court to implead them as petitioner No.1[a] to 1[g] to this petition. The petitioners have filed I.A.No.3 U/O.XXII Rule 4 r/w Sec. 151 of CPC and pray this Court to implead the legal heirs of deceased respondent No.3 as respondent No.3[a] to 3[d] to this petition .

2. This Court issued notices of I.A.No.3 to the proposed respondent No.3[a] to 3[d]. In spite of service of notices, they did not appear before the Court and they remained absent.

3. I have heard Smt.MM Advocate on these applications.

4. The following points arise for my consideration:

1. Whether the applicants have assigned good reasons to implead them as petitioner No.1[a] to 1[g] to this petition?

2. Whether the petitioners have assigned good reasons to implead the legal heirs of deceased respondent No.3 as respondent No.3[a] to 3[d] to this petition?

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:**

6. The petitioners have filed this petition U/Sec.54 r/w Order XX R.18 of CPC to draw

final decree on the basis of preliminary decree passed by this Court on 12.10.2017 in O.S.No.22/2011, which was confirmed in R.A.No.59/2017 and thereby allot their respective shares in the decree schedule properties by metes and bounds.

7. Now the case stands posted for taking further steps. During the pendency of the petition, i.e., on 07.06.2019, the petitioner No.1 by name Sannanagappa died leaving behind the applicants to succeed to his estate. Likewise, the respondent No.3 by name Smt. Lakshmakka died on 18.10.2019 leaving behind her children.

8. The applicants contend that they are the only legal heirs of deceased petitioner No.1 and the petitioners contends that, the persons named in I.A.No.3 are the only legal heirs of deceased respondent No.3.

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

10. 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.

11. If the same is not filed within 60 days, then the parties can file necessary application U/Sec. 5 of Limitation Act by assigning reasons to condone the delay in filing necessary applications.

12. In this case, admittedly the petitioner No.1 died on 07.06.2019. I.A.No.2 came to be

filed on 31.07.2019. The respondent No.3 died on 18.10.2019 and I.A.No.3 came to be filed on 03.01.2020, which are well within the time of limitation.

13. Order XXII Rule 1 of CPC says that the death of plaintiff or defendant shall not cause the suit to abate, if the right to sue survives. The claim against the petitioner No.1 and respondent No.3 will not abate, because, necessary applications are filed within the period of limitation and the right to sue survives on the legal heirs of dead persons.

14. Now by filing these applications, the applicants intend to come on record as parties. The petitioners intend to implead the legal heirs of deceased respondent No.3 as parties to this petition. After the death of petitioner No. 1 and respondent No.3, the right to sue survives on their legal heirs.

15. In their absence, the Court cannot proceed further in the matter. Therefore, it is just and proper to implead the legal heirs of deceased petitioner No.1 and respondent No.3 as parties to this petition. 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. 2 filed by the applicants U/O.XXII R.3 of CPC and I.A.No.3 filed by the petitioners U/O XXII Rule 4 r/w Sec. 151 of CPC are hereby allowed.

The petitioners are directed to implead the applicants as petitioner No.1[a] to 1[g] and the legal heirs of deceased respondent No.3 as respondent No.3[a] to 3[d] to this

petition, by suitably amending the cause title of the petition.

To carry out amendment and to file amended petition, call on 17.08.2020.

Sr. Civil Judge & JMFC.,  
Hiriyur.