

COMMON ORDERS ON I.A.No.4 TO 7
FILED BY THE PLAINTIFF U/O. XXII R.4,
U/O.XXII R.9 OF CPC, U/SEC.5 OF
LIMITATION ACT & U/O. XXXII R.3 R/W
151 OF CPC

The plaintiff has filed IA No.4 to 6 U/O XXII Rule 4, U/O.XXII Rule 9 of CPC and U/Sec. 5 of Limitation Act and prays this Court to implead the legal heirs of deceased defendant No.2 as defendant No.2(a) to 2(c) and the legal heirs of defendant No.4 as defendant No.4(a) to 4(c) to this suit, by setting aside the abatement order by condoning the delay in filing these applications. The plaintiff has filed IA No.7 U/O XXXII R.3 of CPC and prays the court to appoint proposed defendant No.2(a) as the guardian of proposed defendant No.2(c) and defendant No.4(a) as the guardian of

proposed defendant No.4(b) and (c) in the welfare of the minors.

2. This court issued IA Notices to the proposed defendants. Except proposed defendant No.4(a) none others appeared before the court.

3. The proposed defendant No.4(a) filed her written Objections to IA No.4 to 7.

4. I have heard both the counsels on these applications.

5. The following points arise for my consideration:

1. Whether the plaintiff has assigned good reasons to implead legal heirs of deceased defendant No.2 and defendant No.4 as parties to this suit?

2. Whether the plaintiff has assigned good reasons to condone the delay and thereby set aside the

abatement order passed against
defendant No.2 and 4?

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 of his 1/4th share in
the suit schedule properties by metes and
bounds. Now the case stands posted for
plaintiff's evidence.

7. During the pendency of the suit, i.e., on 02.08.2020 the defendant No.2 by name Venkatesh died leaving behind his wife and daughters as his legal heirs to succeed to his estate. Likewise the defendant No.4 by name L.Pradeep died on 26.01.2020 leaving behind his wife and minor children. The plaintiff contends that the persons named in the application are the only legal heirs of deceased defendant No.2 and 4.

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 02.08.2020 and defendant No.4 died on 26.01.2020. These applications came to be filed on 13.01.2021. The plaintiff contends that he could not contact his counsel and file necessary application in time due to the spread of COVID-19.

11. Due to the spread of pandemic COVID-19, the Hon'ble High Court issued notification U/Sec.4 of the Limitation Act on 24.03.2020

for the closure of all the Courts with a view to ensure that the litigants should not suffer. Hence, the plaintiffs get benefit under the notification issued by Hon'ble High Court.

12. It means that, these applications are filed within in the period of limitation. After the death of defendant No.2 and 4, the right to sue survives against their legal heirs. The proposed defendant No.4(a) contends that the plaintiff ought to have filed separate applications to bring the legal heirs of defendant No.2 and 4 on record. The court need not consider such technicalities while entertaining these types of applications.

13. No prejudice would be caused to the defendants if, the legal heirs of deceased defendant No.2 and 4 are brought on record as defendant No.2(a) to 2(c) and defendant

No.4(a) to 4(c) to this suit. Hence, the legal heirs of defendant No.2 and 4 become necessary parties. In their absence, the Court cannot proceed further in the matter.

14. Therefore, it is just and proper to implead the legal heirs of the deceased defendant No.2 and 4 as parties to this suit. The proposed defendant No.2(c) and 4(b) and 4(c) are minors. The court has to consider the welfare of the minors while appointing guardian. The proposed defendant No.2(a) is the mother of proposed defendant No.2(c). The proposed defendant No.4(a) is the mother of proposed defendant No.4(b) and 4(c). The mothers are the best persons to take care of the welfare of their minor children. In such circumstances, it is just and proper to appoint proposed defendant No.2(a) as the guardian

of proposed defendant No.2(c) and proposed defendant No.4(a) as the guardian of proposed defendant No.4(b) and (c) respectively to meet the ends of justice. 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

IA No.4 to 7 filed by the plaintiff U/O XXII Rule 4, U/O.XXII Rule 9 of CPC, U/Sec. 5 of Limitation Act and U/O.XXXII Rule 3 R/w. 151 of CPC are hereby allowed.

The plaintiff is permitted implead the legal heirs of defendant No.2 as defendant No.2(a) to 2(c) and defendant No.4 as defendant No.4(a) to 4(c) to this suit, by suitably amending the cause title of the plaint.

The defendant No.2(a) is appointed as the guardian of defendant No.2(c). The defendant No.4(a) is appointed as the guardian of defendant No.4(b) and 4(c) respectively.

To carry out amendment and to file amended plaint.

Call on 13.01.2022.

Sr. Civil Judge & JMFC.,
Hiriyur.