

COMMON ORDERS ON I.A.No.18 TO 20
FILED BY THE PLAINTIFFS U/O. XXII R.4,
U/O.XXII R.9 & U/SEC.5 OF LIMITATION
ACT

The plaintiffs have filed these 3 applications U/O XXII Rule 4, U/O.XXII Rule 9, R/W Sec.151 of CPC and U/Sec. 5 of Limitation Act and pray this Court to implead the legal heir of deceased defendant No.1 as plaintiff No.3 to this suit, by setting aside the abatement order by condoning the delay in filing these applications.

2. The defendant No.2(a) (b), 3(a) to 3(c) and 4(a) to 4(f) have filed common objections to these applications and contending that, the legal heir of deceased defendant No.1 should be brought on record and thereafter she be transposed as plaintiff. The applications filed by the plaintiffs are not maintainable.

Therefore, they prayed the Court to dismiss those applications.

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

4. The following points arise for my consideration:

1. Whether the plaintiffs have assigned good reasons to implead the legal heir of deceased defendant No.1 as plaintiff No.3 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.1?

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 plaintiffs have filed this suit seeking the relief of declaration that themselves and defendant No.1 are the joint owners of “A” schedule property, for possession of “B” schedule property and for permanent injunction.

7. Now the case stands posted for arguments on merits. During the pendency of the suit, i.e., on 19.03.2020 the defendant No.1 by name B.P Shivanna died. The plaintiffs contend that the person named in the application is the only legal heir of deceased defendant No.1.

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.1 died on 19.03.2020. These applications

came to be filed on 30.11.2020. It means that, these applications are not filed within in the period of limitation. After the death of defendant No.1, the right to sue survives against his legal heir.

11. The defendant No. had filed his written statement, wherein he had admitted the plaint averments and prayed the Court to decree the suit of the plaintiffs. Now the plaintiffs pray the Court to implead the legal heir of deceased defendant No.1 as plaintiff No.3 to the suit. When the original defendant No.1 had supported the case of the plaintiff, there is no obstacle in impleading his legal heir as a plaintiff to the suit.

12. No prejudice would be caused to the other defendants if, the legal heir of deceased defendant No.1 is impleaded as plaintiff No.3

to this suit. Hence, the legal heir of defendant No.1 becomes a necessary party. In her absence, the Court cannot proceed further in the matter.

13. Therefore, it is just and proper to implead the legal heir of the deceased defendant No.1 as plaintiff No.3 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. 18 to 20 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 heir of deceased defendant No.1 as plaintiff No.3 to

this suit, by suitably amending the cause title of the plaint.

To carry out amendment and to file amended plaint, call on 02.01.2021.

Sr. Civil Judge & JMFC.,
Hiriyur.