

ORDERS ON I.A.No.12 FILED BY THE PLAINTIFFS
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 legal heirs of deceased defendant No.4 as defendant No.9[a] to 9[f] to this suit.

2. This Court issued IA notices to the legal heir of deceased defendant No.4 . In spite of service of notices, they did not appear before the Court. They remained absent.

3. I have heard Sri. SJ, Advocate on this application.

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.4 as parties 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.1:

6. The plaintiffs have filed this suit against the defendants seeking the relief of declaration and possession. Now the case stands posted for further defendants' evidence. During the pendency of the suit, on 27.05.2018 the defendant No.4 by name Kuntappa died. The plaintiffs contend that the persons named in the application are the only legal heirs of deceased defendant No.4.

7. 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.

8. 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.

9. In this case, admittedly the defendant No.4 died on 27.05.2018. The present application came to be filed on 27.07.2018, which is well within the time of limitation.

10. 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.4 will not abate, because, necessary application is filed within the period of limitation and the right to sue survives on his legal heirs.

11. The legal heirs of the defendant No.4 are necessary parties. In their absence, the Court cannot proceed further in the matter. Moreover the right to sue survives on the legal heirs of the deceased defendant No.4. Therefore, it is just and proper to implead the legal heirs of the deceased defendant No.4 as parties 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. 12 filed by the plaintiffs U/O XXII Rule 4 of CPC is hereby allowed.

The plaintiffs are directed to implead the legal heirs of deceased defendant No.4 as defendant No. 9(a) to 9(f) to this suit by suitably amending the cause title of the plaint.

To carry out amendment and to file amended petition call on 29.08.2019.

Senior Civil Judge & JMFC.,

Hiriyur