

COMMON ORDERS ON I.A.No.10 TO 12
FILED BY THE PLAINTIFFS U/O. XXII R.4,
U/O.XXII R.9 R/W. SEC. 151 OF CPC &
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 heirs of deceased defendant No.7 as defendant No.7[a] to 7(d) to this suit, by setting aside the abatement order by condoning the delay in filing these applications.

2. This Court issued IA notices to the legal heirs of deceased defendant No.7. In spite of services of notices, they did not appear before the Court. They remained absent.

3. I have heard Sri. GKM on these applications .

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.7 as defendant No.7[a] to 7(d) 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.7 ?

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 they along with defendant No.1 to 10 are the joint owners in possession and enjoyment of A & B suit schedule properties and consequential relief of injunction.

7. Now the case stands posted for further chief examination of PW.1. During the pendency of the suit, i.e., on 14.08.2018 the defendant No.7 by name Ranganna @ Rangappa died. The plaintiffs contend that the persons named in the application are the only legal heirs of deceased defendant No.7.

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.7 died on 14.08.2018 . These applications

came to be filed on 06.07.2019. It means that, these applications are not filed within in the period of limitation. After the death of defendant No.7, the right to sue survives against his legal heris.

11. Hence, the legal heirs of defendant No.7 become necessary parties. In their absence, the Court cannot proceed further in the matter. Therefore, it is just and proper to implead the legal heirs of the deceased defendant No.7 as parties 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. 10 to 12 filed by the
plaintiffs U/O XXII Rule 4, U/O.XXII

R.9, R/W Sec.151 of CPC and U/Sec.5 of Limitation Act are hereby allowed.

The plaintiffs are directed to implead the legal heirs of deceased defendant No.7 as defendant No.7[a] to 7(d) to this suit by suitably amending the cause title of the plaint.

To carry out amendment and to file amended plaint, call on 06.02.2020.

Sr. Civil Judge & JMFC.,
Hiriyur.