

O.S. 39/2018

Common Order on IA No.10 to 12

The plaintiffs have filed this IA U/o 22 Rule 4 R/w Sec.151 of CPC, U/o 22 Rule 9 R/w Sec.151 of CPC and U/Sec.5 of Limitation Act praying to permit them to bring the LRS of deceased defendant No.3 and to condone the delay of 09 months 07 days in bringing the legal-heirs of deceased defendant No.3.

2. In support of these applications the plaintiff No.1 swearing his affidavits.

3. Per contra the defendant No.21, 23, 24 and 27 have filed their objections.

4. Having heard on both sides.

5. The following points will arise for my consideration:-

1. *Whether the plaintiffs made out grounds that the L.Rs. Of Defendant No.3 have got right to sue survives?*
2. *Whether the plaintiffs have made out sufficient grounds to brought the legal-heirs of deceased defendant No.3 by setting-aside abatement and condoning the delay?*
3. *What order?*

6. My answers to the above points are as under:

Point No.1 : In the Affirmative
Point No.2 : In the Affirmative
Point No.3 : As per the order
for the following:

REASONS

7. **Point No.1 & 2:** These points are taken together for common discussion in order to avoid the repetition of facts.

The plaintiffs have filed this suit against the defendants for the relief of declaration, partition and separate possession over the suit schedule properties. That during the pendente lite, since the Defendant No.3 has died on 28-08-2020 by leaving his LRS, the proposed Defendant No.3(a) to (g), plaintiff have sought permission to bring them as Defendant No.3(a) to (g). It is stated that they are the necessary parties to the suit to claim against them as they have got right to sue survives against them have every right to proceed the case against the defendants. Further submitted that due to illiteracy they have not intimated to their counsel and nor reported before the court within stipulated period. Further submitted that the delay has been caused and the said delay was not an intentional one and it is bonafide intention and if they are not permitted by

condoning the delay and setting-aside abatement then they will put untold hardship. Hence prays that allow the applications.

8. On the other hand, the proposed parties even though appeared through their counsels, the Ld counsel said no objection to allow the IA No.10 to 12.

9. In view of the reasons stated in the applications, also observing the arguments advanced by the either side it appears that this is a suit for partition and separate possession over the suit schedule properties. Defendant No.3 was died on 28-08-2020 and in between these days though not mentioned, due to Covid -19 period there were huge gap remained between the parties and counsel, hence no proper communication could be there, this may be one of the reasons for the delay as got right to sue survives to proceed the case against the defendant. Proposed Defendant No.3(a) to (g) have not objected the IA sufficient reasons for set-aside the abatement and condonation of delay. In view of these reasons, and also perusal of the contents of affidavits sworn by the GPA of Plaintiff, and also for the above discussed reasons the point No.1 and 2 are answered in the Affirmative.

10. **Point No.3:-** In view of above findings, I proceed to pass the following:

ORDER

The IA No.10 to 12 filed by the plaintiffs U/O 22 Rule 4 R/w Sec.151, U/O 22 Rule 9 R/w Sec.151 of CPC and Sec.5 of Limitation Act are hereby allowed by awarding cost of Rs.100/- each.

For amendment of plaint cause title within 14 days from this date of this order and for furnishing amendment plaint.

Call on:12-09-2022.

(Sri. Saravana S.)
Senior Civil Judge and JMFC.,
Holalkere.