

COMMON ORDERS ON I.A.No.VII to IX.

I.A. No.VII is filed by the plaintiffs under order 22 Rule 4 R/w section 151 of Code of Civil Procedure to bring LRs of defendant No.2 as Defendant No.2(a) and 2(b) on record.

I.A.VIII is also filed by plaintiffs under order 22 Rule 9 of Code of Civil Procedure seeking to set-aside the order of abatement as against defendant No.2.

The plaintiffs have has also filed I.A. No.IX under section 5 of the Limitation Act to condone the delay in filing application to set aside abatement order.

2. It is contended by the plaintiff No.3 in the affidavit filed in support of the application that during the course of trial the defendant No.2 has expired leaving behind the proposed parties as their legal heirs. Hence, the present applications are filed after delay.

3. On service of notice of applications, the Defendant Nos.2(a) and 2(b) entered appearance through their counsel and filed common objection to the applications stating that, earlier the defendant No.2 has also filed suit in O.S.No.10/2021 before Hon'ble Addl. Civil Judge and JMFC., Hosadurga against the plaintiff for the relief of declaration and the same is pending consideration.

The plaintiffs having knowledge of the said facts have filed this false suit by making the defendant No.2 as party unnecessarily to harass her as she was in the possession of the suit schedule property and claim made by the plaintiff in respect of the property is completely different. After death of defendant No.2, now in order to grab the property of defendant No.2, defendant No.2(a and b) are brought on record. Hence, the defendant No.2(a) and (b) have sought for dismissal of the applications.

4. Heard arguments of both sides.

5. Perused the plaint averments. As per the plaint averments the present suit is filed for the relief of declaration and permanent injunction. The plaintiffs specifically contended that, the defendant No.2 died on 01.07.2024. There is delay in bringing legal representatives of defendant No.2 on record as well as filing application for setting aside abatement of suit. It is further stated that, the delay is not deliberate or intentional one. Representatives of Defendant No.2 who are also found to be necessary parties to the present suit for adjudication of their rights. The objection raised by the defendant No.2(a and b) is touching the matter on merits and no such contentions are taken to make this court to dismiss the instant applications. Hence, the plaintiffs have made out grounds and reasons in the

applications and the same is found to be satisfactory. On death of defendant No.2, her right to sue survives on her legal representatives. Therefore, the applications filed by the plaintiffs deserve to be allowed. Accordingly, this court proceed to pass the following:

ORDER

- I.A.No.VII filed by the plaintiffs under Order 22 Rule 4 R/w section 151 of Code of Civil Procedure is hereby allowed. No costs.
- I.A.No.VIII filed by the plaintiffs under order 22 Rule 9 of Code of Civil Procedure is hereby allowed on cost of Rs.250/-.
- I.A.No.IX filed by the plaintiffs under section 5 of Limitation Act is hereby allowed on cost of Rs.250/-.
- The plaintiffs are permitted to bring the Legal Representatives of defendant No.2 as defendant No.2(a) and (b) on record. Order of abatement against Defendant No.2 is set-aside and the delay is condoned.
- For payment of cost, carrying out amendment and for furnishing amended plaint by 02.12.2025

**(Prassana Kumar C.)
Prl. Civil Judge & JMFC,
Hosadurga**