

ORDER

The advocate for plaintiffs filed I.A.No.X U/o XXII rule 3 of CPC to bring the LR's of deceased plaintiff No.4 on record, I.A.No.XI U/o XXII rule 9 R/w Sec. 151 of CPC to set aside the abatement and I.A.No.XII U/Sec.5 Limitation Act to condone the delay in filing the abatement application, in the interest of justice and equity.

Advocates for defendants have filed objections contending that the applications filed belatedly are not maintainable and neither the plaintiffs nor the legal heirs of plaintiff No.4 are the members of joint family and as such the applications are liable to be dismissed.

Heard, the counsels for plaintiffs and defendants.

Perused the I.A. and materials available on record.

On perusal of the I.A.No. X to XII and available records, it reveals that the plaintiffs have filed suit for declaration

and partition of their shares in the suit schedule properties.

Since, it is a suit for declaration and partition, the right to suit survives on the LRs of plaintiff No.4 to proceed with the matter.

The objections of the defendants that the plaintiffs are not the members of joint family can only be adjudicated after completion of trial at the time of final hearing. There is no dispute with regards to legal heirs of plaintiff No.4 and the reasons assigned by the Legal heirs of plaintiff are satisfactory, as such the applications are liable to be allowed. Hence, this Court proceed to pass the following;

ORDER

The IA.No.XII filed U/Sec.5 of Limitation Act is hereby allowed, the delay in filing the abatement application is condoned.

The IA.No.XI filed U/o XXII rule 9 R/w Sec. 151 of CPC is hereby allowed, the abatement is set aside.

The IA.No.X filed U/o XXII rule 3 of CPC is hereby allowed and the

legal heirs of plaintiff No.4 are hereby permitted to come on record and proceed with the matter.

The plaintiffs are hereby directed to amend the plaint and furnish the amended plaint.

For amendment.

Call on 28/06/2021.

*Addl.Civil Judge & JMFC.,
Hosadurga.*