

O.S. No.394/2022

ORDER ON I.A. NO.II and III

The Plaintiff has filed an applications under Order 22 Rule 3(1) R/w sec 151 of C.P.C., praying to bring the legal representative of the deceased 3rd plaintiff and also filed application under Order 22 Rule 9(2) of C.P.C. R/W.5 of limitation Act, praying to set aside the order of abatement of this suit against the 3rd plaintiff by condoning delay.

2. In the affidavit accompanying to the application it is stated that, the applicants are the legal heirs of deceased plaintiff No.3 and he died on 05.09.2022. The legal heirs are the wife and daughter of deceased plaintiff No.3. Hence, prayed to allow the said applications.

3. The learned counsel for the defendants fairly submits to allow I.A. No.2 and 3.

4. Heard arguments.

5. Perused the case materials produced before the court.

6. After going through the applications with affidavit the following points arise for my consideration are;

1. Whether the applications filed by the applicants under Order 22 Rule 3 and Order 22 Rule 9 of C.P.C. R/w. Section 5 of Limitation Act are deserves to be allowed?

2. What order ?

7. My answer to the above points are as under:

Point No.1: In the Affirmative

Point No.2: As per the final order for the following:

REASONS

8. **Point No.1:** The plaintiff has filed the suit for the relief of permanent injunction against the defendants in respect of the suit schedule property. Through this application, the applicants have sought to bring them as LR's of deceased Plaintiff no-3. It is pertinent to note that, in a suit for injunction the right to sue survives upon the legal heirs of original plaintiff. In the instant case on hand, after the death of Plaintiff the right to sue survives on the LRs. No prejudice will be caused to the defendants if these applications are allowed. On the other hand, if the applications are rejected,

the decree cannot be passed in the absence of LRs of Plaintiff. Even after the death of original plaintiff no-3 his LRs can maintain suit against the defendants. Hence, it is just and necessary to consider the applications filed by the applicants. Since the right to sue survives against the LR's of deceased Plaintiff, it is just and necessary to consider these applications. In view of the reasons stated above, I proceed to pass the following:

ORDER

The I.A. No.II and III are hereby allowed.

The applicants are permitted to come on records as LRs of plaintiff No.3.

The plaintiff counsel is permitted to carry out amendment and furnish amended plaint by 09.11.2023.

Sd/-

1st Addl. C. J. & JMFC., Kadur.