

COMMON ORDER IA NO. IV U/O XXII RULE IV OF CPC
AND ON IA NO III U/O XXII RULE IX OF CPC, AND IA NO II
U/SEC. V OF LIMITATION ACT

The Plaintiffs have filed this suit against the Defendants for the relief of partition and separate possession in respect of suit schedule properties.

2. During pendency of the suit the Defendant No.3 by name Javarashetty passed away. As his legal representatives were not brought on record, the Plaintiffs have subsequently filed I.A No.2 U/s 5 of Limitation Act to condone the delay in filing the applications and I.A. No. 3 U/o 22 Rule 9 of C.P.C, praying to set aside the abatement and I.A. No.4 U/o 22 Rule 4 of C.P.C, praying to bring the L.R., of the deceased Defendant No.3 on record.

3. In the affidavit filed in support of the application, the Plaintiff has sworn to that certain delay was caused as she was unaware of the death of defendant No.3 and due to

said reason, the applications have not been filed in time. That the delay is due to lack of knowledge and ignorance and said mistake is bonafide mistake. That the deceased Defendant No.3 has no other legal heirs and as such, the LR's have to be brought on record. Accordingly, has sought to allow the applications.

4. The LR's of Defendant No.3(a) has appeared appeared through her counsel, but has not filed any objections.

5. Heard,

6. As these applications are interconnected and are interdependent they are taken up together for disposal in order to avoid repetition of facts.

7. For disposal of I.A.Nos.2 to 4 following points arise for consideration:

1. Whether the Plaintiffs have made out sufficient grounds to condone the delay in filing these applications?
2. Whether the Plaintiffs have made out sufficient grounds to set side abatement?
3. Whether the Plaintiffs have made out sufficient grounds to bring the legal representatives of the deceased Defendant No.3 on record?
4. What order?

8. Having heard arguments on both side, my findings to the above points are:

Point No.1: In the affirmative

Point No.2: In the affirmative

Point No.3: In the affirmative

Point No.4: As per the final order

for the following:

REASONS

9. Points No.1 to 3:- As these points are interconnected and are interdependent they are taken up together for discussion in order to avoid repetition of facts. There is no dispute regarding the demise of Defendant No.3 by name Javarashetty and relationship with the legal representative sought to be brought on record. This is a suit for Partition and Separate possession. Therefore, after the death of Defendant No.3 the right to sue survives on the LR's of Defendant No.3. Order 22 Rule 1 of CPC makes it clear that, death of Plaintiff or Defendant shall not cause the suit to abate if the right to sue survives. After the death of Defendant No.3 the right to sue survives on his legal heirs. Therefore, the legal heirs of Defendant No.3 is necessary party to this suit to elucidate the real dispute between the parties.

10. According to the Plaintiffs due to bonafide reasons, these applications were not filed in time. Merely because, the

applications were not filed in time does not mean that the Plaintiffs have lost their rights to prosecute the suit. Therefore, the legal heir deceased Defendant No.3 is necessary parties to this suit to elucidate real dispute between the parties. In the suit for partition all the sharer are necessary parties.

11. If these applications are allowed no hardship or injury would be caused to the Defendants. On the other hand, if they are rejected the legal rights of the Defendant No.3(a) would come into question and it would not possible for proper adjudication of the suit. It also would lead to multiplicity of proceedings. Therefore, there are no grounds to reject the prayer of the Plaintiffs. Accordingly, Points No.1 to 3 are answered in the Affirmative.

12. Point No.4:- In the light of the above discussion, I proceed to pass the following:

ORDER

I.A.No.2 filed by the Plaintiffs U/s 5 of the Limitation Act is allowed and the delay in filing these applications is condoned.

I.A.No.3 filed by the Plaintiffs U/o 22 Rule 9 of CPC is allowed and abatement of the case is set aside.

I.A.No.4 filed by the Plaintiffs U/o 22 Rule 4 of CPC is allowed and legal representative of deceased Defendant No.3 by name Javarashetty are brought on record.

The Plaintiffs are directed to implead the legal heirs of deceased Defendant No.3 as Defendant No.3 (a) Madamma to this suit by suitably amending the cause title of the plaint.

To carryout amendment and to file amended plaint. Call on : 05.10.2023.

(A.N.Kanthamma)

Addl. Civil Judge & JMFC.,
Gundlupet.