

Orders on IA No.VII to IX

These applications filed by the plaintiff seeking the order of the court to bring the legal heirs of deceased defendant No.2 as defendant No.2(a) to (c) by setting aside abatement order if any passed against deceased defendant No.2 by condoning the delay.

2. In support of these applications the plaintiff No. 1(a) sworn an common affidavit and stated that, her husband filed the present suit against the defendants seeking the relief of declaration of title and consequential relief of permanent injunction over the suit schedule property. During the pendency of the case the defendant No. 2 died on 21-03-2020 and the same is reported to the court as she resided at Bhadravathi City, due to unhealthiness of her husband she unable to give instruction to her counsel within due time. The present legal heirs of deceased defendant No. 2 are the necessary parties in the present suit and right to sue survives on

them. In order to avoid the multiplicity of the proceedings in future and to adjudicate the matter effectively it is necessary to bring the said legal heirs on record by setting aside the abatement order passed against the deceased defendant No. 2 as well by condoning the delay in filing these applications. If this application is not allowed she will be put to irreparable loss and injury, if this application is allowed no hardship will be caused to the other side.

3. Notice on I.A No. 7 to 9 on the legal heirs of the deceased defendant No. 2 duly served and they are represented through their counsel. Their counsel receipts his signature on the I.A.s that he has no objection to allow the applications.

4. Heard from the learned counsel for the plaintiff and legal heirs of defendant No. 2.

5. Admittedly the present suit filed by the plaintiff against the defendants seeking the relief of declaration and permanent injunction with respect to the suit schedule property. As contended by the plaintiff, the legal heirs of deceased defendant No. 2 are the necessary parties to adjudicate the matter effectively between the parties as right to sue survives on the legal heirs of the deceased defendant No.2. These applications are filed belatedly as the plaintiff has explained in affidavit reason beyond filing the applications after lapse of statutory period. The proposed legal heirs of defendant No.2 have not objected the said applications. Therefore, no doubt there is delay in filing these applications. Thus, on the same ground the applications cannot be rejected. The said delay can be compensated by imposing necessary costs. Hence the

present applications deserves to be allowed as the Lrs of deceased defendant No.2 are the necessary parties to the present suit to adjudicate the matter effectively and to avoid multiplicity of proceedings in future. Hence, the following order:

ORDER

I.A No.VII to IX filed by the applicant/plaintiff No.1(a) U/Sec. 5 of Limitation Act , under Order XXII Rule 9 and under Order XXII Rule 4 R/w 151 of CPC are hereby allowed with cost of Rs.300/-.

The delay in filing the present applications are hereby condoned and the abatement order passed against the deceased defendant No.2 is hereby set aside.

Accordingly the plaintiff is permitted to bring the legal heirs of defendant No.2 i.e defendant No.2(a) to (c) on record through necessary amendment in the cause title of the plaint.

To carry out amendment in cause title of plaint and to furnish amended plaint.

Call on 07-11-2025.

(Smt. Mahalakshmi. G)
I Addl. Civil Judge & J.M.F.C.,
Channagiri.

