

Order on IA No.3 to 5

The applicants have filed IA No.3 to 5 Under Order 22 Rule 3 r/w 151 of CPC, Under Order 22 Rule 9 of CPC and Under Sec.5 of Limitation Act, praying to permit them, to come on record as plaintiff, as they are LRs of deceased plaintiff by setting aside, the abatement if any, by condoning the delay.

2. Mainly, on the grounds that, they are legal representatives of deceased plaintiff, and suit is one for bare injunction on the death of plaintiff, the suit does not get abatement. As the cause of action survives on the LRS of plaintiff. As such, they prayed to permit them on record as plaintiff, by condoning the delay by setting aside the abatement, if any.

3. Per contra, Sri.RBY advocate for defendant, has filed common objection to all this IA's. Where in he vehemently contended that, the applicants have not filed G-tree to show they are the legal heirs of deceased plaintiff, and exact days of delay in filing the present application has not mentioned . Accordingly, prayed to dismiss all these IA's.

4. Heard both the sides, perused, the materials on record.

5. It is well settled law that, Under Order 22 Rule of CPC, mere death of plaintiff, suit does not gets abatement. If right to suit survives. So, though the suit is filed by the plaintiff for permanent injunction. But, the death is of the plaintiff, but, not sole defendant.

So, the right to suit survives on the LRs of plaintiff. The defendant in his objection vehemently contended, the applicants have not furnished the G-tree. Accordingly, they cannot be treated as LRS of plaintiff. But, said objection of the defendant cannot sustainable under law. Because, though, the G-Tree has not produced but, the plaintiff itself apparently, discloses that, one of the sons of the plaintiff i.e., the GPA holder of Shashikumar has instituted this suit on behalf of his father, it prima facie satisfies that, the applicants and LRS of plaintiff. Therefore, the objection, of the defendants are non furnishing of G-Tree is not sustainable under law. Further so, for as delay is concerned, it is well settled law that, the provision Under 22 Rule 3 of CPC is a procedural aspect, should be constructed liberally. Therefore, mere non mentioning of delay does not ipso facto the grounds to reject the the application. As such, in order to avoid multiplicity of proceedings the delay may be condoned. Accordingly, the LRS or the applicants are necessary parties, to proceed the case against the defendants. Hence, they may be permitted to prosecute the suit. Hence, following:

Order

IA No.3 to 5 filed by the applicants Under Order 22 Rule 3 r/w 151 of CPC, Under Order 22 Rule 9 of CPC and Under Sec.5 of Limitation Act are hereby allowed.

Consequently, the applicant are permitted come on record Plaintiff No. 1(a) to (c) and prosecute the suit against the defendant.

Further , plaintiff are carried out the amendment to the cause title, and for Amendment Plaintiff,

To here on IA filed Under order 1 Rule 10 by Sri. SHE advocate on 03.12.2019. Call on:27-02-2020

Pri .CJ and JMFC.,Honnali