

ORDERS ON I.A.No.15

This is an application filed by plaintiff U/O.22 Rule 2 r/w Sec.151 of CPC, praying the Hon'ble court to implead the legal representatives of deceased plaintiff in the interest of equity and justice.

2. In the accompanying affidavit, one of the son of deceased plaintiff submit that, his father is dead on 22-02-2021 leaving behind his mother and other legal representatives. They are necessary parties to the suit and hence they should be brought on record. If the said application is allowed, no hardship will be caused to the other side. Hence the application.

3. On the other hand, defendants No.2 to 27 have filed their objections to the said application, contending that, suit is one for damages for the alleged destruction of super structures put on the land. Apart from this, plaintiff also claimed the relief through partnership business. Hence, right to sue to the family members is not survive. Hence, prays for rejecting the above application.

4. Heard both sides.

5. On perusal of the entire records, the only points that would arise for my considerations are:

- 1] Whether the plaintiff has made out sufficient grounds to allow the application?
- 2] What order?

6. My findings on the above points are as under:

Point No.1 : In the Affirmative.

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

REASONS

7. **Point No.1** : On perusal of records it is noticed that, on 8-10-2013 plaintiff Sri. Y. Raghurama Shenoy has filed the above suit against defendants No.1 to 27 claiming damages for sum of Rs.1 crore along with interest at the rate of 18% p.a., It is main contention of the plaintiff that, he and 28th defendant are the owners of suit schedule property. Wherein, several commercial shops and building was constructed and it was run by plaintiff. Defendants by their illegal act demolished the building belonging to the plaintiff, which shows that, defendants acted high handedly and caused loss to the plaintiff. Hence, plaintiff is claiming damages from the defendants. Defendants have also denied the said allegations in their written statement. Accordingly, the issues were framed, evidence is not yet commenced. During the course of proceedings, the sole plaintiff died on 22-02-2021. There is no objection from defendants regarding the death of deceased and that the applicants are the legal representatives of deceased plaintiff. Apart from this, the

said application is filed on 29-03-2021, which is well within the period of limitation. Only objection raised by the defendants is that, since plaintiff is claiming right through partnership business and damages is right in persona. Cause of action doesnot survive to the legal representatives of deceased plaintiff. But, on perusal of the plaint averments it is seen that, plaintiff has claimed that he is absolute owner, there is no pleading to theeffect that, he is running the business under the partnership concerned. Even otherwise, plaintiff is aggrieved by the illegal demolition of the property by the defendants. After the death of sole plaintiff only the son inherits the property. Under these circumstances, right to sue survive upon the legal representatives of the deceased plaintiff. Hence, whatever the objection taken by the defendants is not sustainable. Therefore, I am of the opinion that, since right of the parties is involved in respect of the immovable property, technicalities should not come in the way of rendering the justice. Hence, application deserves to be allowed. Hence, this point is answered in the **Affirmative**.

8. **Point No.2:** In view of reasons assigned above, I proceed to pass the following:

ORDER

I.A.No.15 filed by the plaintiff U/O.22 Rule 2
r/w Sec.151 of CPC is hereby allowed.

No order as to costs.

LR's of deceased plaintiff are permitted to come on record to prosecute the above suit.

Plaintiff to carry out amendment in cause title.

For plaintiff evidence.

**Addl. Sr. Civil Judge and JMFC,
Puttur, D.K.,**