

**IN THE COURT OF THE CIVIL JUDGE AND J.M.F.C.  
NAVALGUND**

**F.D.P. No.6/2021**

**Dated this the 06<sup>th</sup> day of October, 2023**

**Present : Sri. Naveen F. Dsouza**

**B.B.A., L.L.B., (Spl).,**

**Civil Judge and JMFC., Navalgund.**

Petitioners :1. Mahesh S/o. Mallappa Pujar,  
Age: 39 years, Occ: Coolie,  
R/o. Annigeri, Tq: Annigeri,  
Dist: Dharwad and another.

(By Sri. SBG/SMH/HBM. ., Advocates)

**Versus**

Respondents :1. Mallappa S/o. Shivappa Pujar,  
Age: 58 years, Occ: BSNL Employee,  
R/o.Naregal, Tq: Gajendragad,  
Dist: Gadag and others.

(By 4-9 by Sri. HDG/PHK, Advocates)

**PARTIES TO I.A.**

Applicants : 1. Veeresh S/o. Mallappa Pujar & another

**Versus**

Opponents : 1. Mallappa S/o. Shivappa Pujar & others.

**ORDERS ON I.A. FILED UNDER ORDER XXII RULE 4,  
XXII RULE 9 R/W. SECTION 151 CPC AND UNDER  
SECTION 5 OF LIMITATION ACT ON 24.03.2023 TO  
BRING LRS OF DECEASED RESPONDENT NO.3.**

The learned counsel for petitioners has filed 3 applications under Order XXII Rule 4 of CPC to bring the LR's of deceased respondent no.3 i.e., the respondent no.3(a) to respondent no.3 3(d) on record and also to set aside the order of abatement by operation

of law under Order XXII Rule 9 of CPC as well as I.A. to condone delay under Section 5 of Limitation Act.

2. In the applications it is contended that the respondent no.3 has died on 07.08.2022. It is further contended that the LR's of deceased respondent no.3 are necessary parties to this case and that the cause of action survives after his demise as such his LR's is required to be impleaded in this case. On 24.03.2023 the I.A. notice was served to LR's of respondent no.3 and on 23.08.2023 respondent no.3(a), 3(c) and 3(d) they were called out absent and notice to respondent no.3(b) returned unclaimed. Hence, the legal heirs of respondent no.3 have been issued with the Court notice and they are in knowledge of the proceedings. Hence, the applications mentioned above filed on 24.03.2023 has remained unopposed.

3. This is a final decree proceedings. Therefore, the cause of action survives even after the demise of deceased respondent no.3. Thus the presence of LR's of deceased respondent no.3 are essential for complete adjudication of the dispute between the parties.

4. As per order XXII Rule 4 of CPC., where the sole respondent dies and the right to sue does not survive then there is no provision to bring the LR's of such deceased sole respondent. The Hon'ble High Court of Karnataka in the case of **Smt. Venkubai (Deceased) By LR's Vs. The Assistant Commissioner**, reported in **1998(5) KarLJ 171** has summarized the law relating to the impact of death of parties in a suit for injunction simpliciter. The relevant portion of the said judgment is extracted hereunder;

*“There is a distinction between the death of the plaintiff and the death of the defendant. The injunction is operative against the defendants. In fact, the model form of prayers in many suits for injunction would be “restraining the defendants or his men or servants or agents or anybody claiming under or through him”. Therefore, on the death of the defendant, all these persons would vanish. Consequently, the question of binding the L.Rs of the defendant by such injunction would not arise. But this will not be the case, if the plaintiff who seeks injunction dies, A decree for injunction obtained by the plaintiff can be succeeded to by his L.Rs and such a right of injunction does not die with the plaintiff...”*

5. This is a final decree proceedings. Therefore, the cause of action survives even after the demise of deceased respondent no.3. Thus the presence of LRs of deceased respondents no.3 is essential for complete adjudication of the dispute between the parties. So far as delay is concerned, it is relevant to note that the same can be suitably compensated. Since the presence of LRs is necessary for complete adjudication of the case, this Court is of the considered view that the the applications deserves to be allowed. Consequently, the LRs of deceased respondents no.3 i.e., respondent no.3(a) to respondent no.3(d) are required to be brought on record. Hence, this Court proceeds to pass the following;

**ORDER**

*The I.A. filed by the petitioner no.2 under Order XXII Rule 4 of CPC and under Order XXII Rule 9 of CPC., and Section 5 of Limitation Act on 24.03.2023 to bring Lrs of respondent no.3 on record, set aside abatement in bringing LR's of deceased respondent no.3 and condone delay, is hereby allowed on cost of Rs.300/-. The abatement by virtue of operation of law is set aside. Further the delay in bringing LRs of respondent no.3 is hereby condoned.*

*The respondents no.3(a) to respondent no.3(d) are brought on record as LR's of respondents no.3. The petitioners are directed to amend the cause title in the original petition and also submit the amended petition copy by mentioning the description of legal representative as mentioned above.*

*Issue notice to respondents no.3(a) to respondent no.3(d) on compliance of this order.*

*For amended petition copy and for amendment in the original petition, call on*

(Dictated to the stenographer, transcribed and typed by her, the transcript revised, corrected and then pronounced by me in the Open Court on this **06.10.2023.**)

(Naveen F. Dsouza)  
Civil Judge and J.M.F.C.,  
Navalgund.