

**Orders on I.A.No.II**

This application is filed by the plaintiff under Order 22 Rule 4 of Civil Procedure Code seeking to bring LR's of defendant No.1 on record as defendant No.1(a) to 1(c).

2. Before ordering notice to the said LR's of defendant No.1, the learned counsel for the defendants has submitted that the present application is not maintainable since the present suit is filed for the relief of bare injunction in respect of the immovable properties.

3. Accordingly, heard arguments of both sides. Perused the suit papers.

4. Present suit is filed against the defendants for the relief of permanent injunction to restrain the defendants from encroaching upon and interfering with the possession of the

plaintiff over the suit property. The present suit is filed against two defendants and the same was maintainable since cause of action against both of them being the same and hence the right to relief for the plaintiff was arising out of the same act. When such being the case, it is obvious that when one of the defendants had died during the pendency of the suit, there was no need for the plaintiff to bring his legal representatives on record, since the right to sue would survive in respect of the remaining defendant. In other words, it could be said that on the death of one of the defendants, the cause of action against him had ceased and therefore, the question of bringing LR's on record would not arise. The relief sought for by the plaintiff against the defendants is for bare injunction. Thus, the action against the deceased defendant No.1 as well as against the remaining defendants i.e., defendant No.2 was their actual interference in the suit property. Therefore, there could be no cause of action against the legal representatives of defendant No.1 who had expired and in such circumstances, there is no necessity for the plaintiff to bring on record the legal representatives of the deceased defendants.

5. The Hon'ble High Court of Karnataka in **W.P.No.15445/2015 between Usha Gopala Gowda V/s M.T.Tharanath** was pleased to hold as under :

*“10. Order 22, Rule 1 of the Civil Procedure Code expressly prescribes that there is no abatement by party's death and*

*that the death of a plaintiff or a defendant shall not cause the suit to abate if the right to sue survives. Rule 2 says that where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants. In its turn Rule 4 of Order 22 lays down that where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit. Sub-rule(3) of Rule 4 provides that where within the time limited by law no application is made under sub-rule(1), the suit shall abate as against the deceased defendant.*

*11. It thus follows that in a case when the right to sue survives against the remaining defendants the question of the plaintiff bringing the legal representatives of the deceased defendants does not arise. In the instant case the application of the appellant to bring the legal representatives of the deceased defendant No.4 was redundant because admittedly the suit having been filed for injunction simpliciter the cause of*

*action against the said defendant had ceased on his death. On the other hand, as rightly contended by Shri Usgaonkar, if the plaintiff instead of instituting a single suit against all the defendants had filed separate suits against them obviously the suits against the surviving defendants could not have been defeated or dismissed on the ground that on the death of one defendant in the suit the plaintiff had failed to bring his legal representatives on record. The consequence of that failure would be that the suit against the concerned defendant would be abated and no impact this abatement could have caused on the fate of the remaining suits. This being the position it is clear that the appellant could not have been placed in a worse position in case he had chosen to file a single suit against all the defendants as provided by the law in terms of Order 22, Rule 1, C.P.C."*

6. Therefore, in the present case in hand and also as per discussions made above, this court comes to the conclusion that no cause of action is alleged against the legal representative of the defendant No.1. Therefore, the suit can be continued in so far as defendant No.2 is concerned. Hence, the present application deserves to be dismissed. Accordingly, this court proceed to pass the following:

**:: ORDER ::**

- I.A.No.II filed by the plaintiff Under Order 22 Rule 4 of Civil Procedure Code is hereby dismissed.

- No order as to costs.
- For plaintiff evidence by 03-01-2023.

**(Prasanna Kumar C.)**  
**Civil Judge & JMFC, Belur.**