

Common Orders on I.A.No.3 to 5

I.A.No.3 is filed by the plaintiffs under Order 22 Rule 4 R/w Sec.151 of Civil Procedure Code to bring the LR's of Defendant No.4 as defendant No.4(a) to 4(c).

2. I.A.No.4 is filed Under Order 22 Rule 9 R/w Sec. 151 of Civil Procedure Code and I.A.No.5 is also filed by the plaintiffs Under Section 5 of the Limitation Act.

3. Even though the notice of I.A.No.3 to 5 are duly served on the defendant No.4(a) to (c), they remained absent.

4. Heard arguments.

5. In the affidavit, filed in support of the applications, it is contended by the plaintiff No.3 that the present suit is filed for the relief of declaration in respect of the suit property. It is contended that during the course of trial, the defendant No.4 has expired and they have got information of death of defendant No.4, but due to the Covid-19 pandemic situation, the plaintiffs could not get the knowledge of death of defendant No.4 since the connectivity between the relatives of plaintiffs was curtailed. Recently, they came to know about the death of defendant No.4. Hence, the present applications are filed.

6. In all the three applications and affidavits, the plaintiffs have not disclosed anything regarding the date of death of defendant No.4 and the death certificate is also not produced. However, in the written statement filed by the defendant No.1 to 3 and 5, they have specifically contended that the defendant No.4 has expired about several years ago and the present suit is filed against the dead person. It is argued by the learned counsel for the plaintiffs that on coming to know of the death of defendant No.4, they have filed this application Under Order 22 Rule 4 of CPC. But as already stated above, the date of death of defendant No.4 is not disclosed anywhere.

7. Further, in the para No.11 of the plaint, while narrating the cause of action, it is contended that the same has arisen from January 2021, when the defendants tried to dispossess the plaintiffs and interfered with their peaceful possession. But the written statement of defendant No.1 to 3 and 5 certainly discloses that the defendant No.4 has died

about several years ago and it can be presumed that before the date of institution of the suit. When such being the case, the plaintiffs cannot take shelter under Order 22 Rule 4 of Civil Procedure Code to bring the legal representatives of defendant No.4 since the defendant No.4 has not died during the pendency but after institution of this suit.

8. This court referred to the decision in **Civil Revision Petition No.91/1961 between C.Muttu V/s Bharath Match Works decided on 07.08.1963** wherein the Hon'ble High Court of Karnataka while discussing the same set of facts was pleased to hold that *"a suit filed by the petitioner against the dead person was a nullity and that the learned Subordinate Judge was rightly justified in dismissing the suit on the grounds that the respondent could not be substituted in the place of original defendant who was dead on the date of presentation of the suit itself"*. The Hon'ble High Court of Karnataka in the said decision was pleased to refer the case reported in **AIR 1946 Sind 20 between the Municipal Corporation of Karachi V/s Baradiojumoo Mughal** wherein it was held that: *"Where a suit is filed against a dead person, the Court has no jurisdiction to entertain an application under order 1 Rule 10, or under Order 22 Rules 4 and 9 or do any other act authorised by the Civil Procedure Code, as the suit filed against a dead person is a nullity. His Lordship further held that "bona fides or malafides of the plaintiff are immaterial"*.

9. Therefore, the said observation cited above are directly applicable to the present suit. It appears that the plaintiffs have mislead while giving instructions to their

counsel to institute the suit against dead person and further they continued their said act without revealing actual date of death of defendant No.4. Now by virtue of filing these applications, the plaintiffs are trying to bring legal representatives of deceased defendant No.4 on record, which this court cannot entertain at this point of time. Therefore, all the three applications filed by the plaintiffs are not maintainable and the same deserve to be dismissed. Accordingly, this court proceed to pass the following:

ORDER

I.A.No.3 filed by the plaintiffs under Order 22 Rule 4 R/w Sec.151 of Civil Procedure Code is hereby dismissed.

I.A.No.4 filed by the plaintiffs under Order 22 Rule 9 R/w Sec.151 of Civil Procedure Code is hereby dismissed.

I.A.No.5 filed by the plaintiffs under Section 5 of the Limitation Act is also dismissed.

No order as to costs.

To hear on I.A.No.2 and 6 by
29.08.2022.

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