

COMMON ORDERS ON APPLICATIONS FILED
UNDER ORDER 22 RULE 4 OF CPC, ORDER 22
RULE 9 OF CPC AND SECTION 5 OF
LIMITATION ACT

These applications are filed by the plaintiff under order 22 Rule 4 of CPC, order 22 rule 9 of CPC and section 5 of limitation act of CPC to bring the legal representatives of deceased defendant No.1 by name H.T. Dharmappa as defendant No.1(a).

2. In the affidavit filed in support of applications plaintiffs has contended that he has filed the present suit for the relief of permanent injunction in respect of suit schedule property. He came to know that, defendant No.1 died on 17.04.2024 leaving behind defendant No.1(a) and defendant No.2 as his legal representatives. Hence, the Lrs of defendant No.1 are necessary parties to proceed with the suit. Further, the application under order 22 rule 9 of CPC to set aside the abatement and application under section 5 of limitation act for condoning the delay. Hence, the applications are came to be filed belatedly and the same needs to be

allowed by condoning the delay in filing the application by setting aside the abatement. He further contended that right to sue survive on the Legal representatives of defendant No.1. Hence, prayed to allow the applications.

3. The notice of the applications were issued to the LRs of defendant No.1. she has appeared before the court and filed common objections by contending that cause of action is personal and does not survive against the legal heirs. Hence, the case against defendant No.1 is abated. The applications is barred by law. The plaintiff has not shown sufficient reasons to allow the application. Accordingly, prayed to dismiss the applications.

4. Heard arguments.

5. The points that arise for consideration of the court are:

1. Whether the LRs of deceased defendant No.1 be brought on record as defendant No.1(a) ?

2. What order?

6. The findings of the court on the aforesaid points are as follows:

Point No.1: In the *Affirmative*

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

::REASONS::

7. **Point No.1:** The plaintiff has filed the present suit for the relief of permanent injunction. It is contended by the plaintiff that defendant No.1 died on 17.04.2024. The reasons stated in the applications are found to be genuine and bonafide. Further, the LRs of defendant No.1 have contended that the present suit is right in personem. Whereas the Hon'ble High court of Karnataka has held that the right to sue survives against the LRs of defendant No.1 as the property in question is involved. Further, one of the sons of defendant No.1 is also party to the suit. Hence, this court is inclined to allow the applications. Accordingly point No.1 is answered in the *Affirmative*.

8. **Point No.2::** For the above reasons discussed for point No.1, I proceed to pass following;

::ORDER::

Applications filed under order 22 Rule 4 of CPC, order 22 rule 9 of CPC and section 5 of limitation act by the plaintiff are hereby allowed on costs of Rs.300/-.

The plaintiff is directed to implead the legal representatives of deceased defendant No.1 as defendant No.1(a).

The plaintiff is directed to amend the cause title to that effect.

For amendment of cause title and to file amended plaint.

Call on: 04.02.2026.

C/c I Addl. Civil Judge and JMFC,
Sakaleshpura.