

ORDERS ON I.A.Nos.XV AND XVI

The learned counsel for the plaintiffs has filed I.A.No.XV and XVI U/Order XXII Rule 4 of CPC, praying to implead the proposed defendant Nos.1(a) to 1(d) and defendant No.5(a) to 5(e) in this suit.

2. In the affidavit filed separately in support of the above I.As, the plaintiff No.5 has stated that, they have filed the suit for partition against the defendants. But during the pendency of the above suit, the defendant No.1 Mallappa S/o Ningappa Mayachari died on 26-07-2024 leaving behind the proposed defendant Nos.1(a) to 1(d) as his legal heirs. Further the defendant No.5 Kalachari S/o Mayachari died on 27-06-2024 leaving behind the proposed defendant Nos.5(a) to 5(e) as his legal heirs. Hence, the proposed defendants being the legal heirs of the deceased defendant Nos.1 and 5 are the necessary parties to the said suit. The suit is one for partition, hence suit will not be abated, but in abundant caution the accompanying applications are filed. If the said applications are not allowed, they will be put to irreparable loss and hardship. Hence, prays to allow the said applications.

5. On the other hand, in pursuance of the notice, the proposed defendants have appeared to their respective counsels. But not filed objections to the said applications.

6. Heard both side and perused the materials available on record.

7. The points that arise for my consideration are:

1. Whether the applicants/ plaintiffs have made out sufficient grounds to allow the I.A. Nos.XV and XVI as sought for?

2. What order?

8. My answer to the above points are as follows:

Point No.1 : In the Affirmative

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

REASONS

9. **Point No.1:** This suit is filed by the plaintiffs for the relief of partition and separate possession of their respective shares in the suit schedule properties. The plaintiffs have filed I.A.Nos.XV and XVI praying to implead the proposed defendants as legal heirs of deceased defendant Nos.1 and 5 in the suit. In the affidavit filed in support of the applications, the plaintiffs have stated that, the defendant Nos.1 and 5 died leaving behind the proposed defendants as their legal heirs. Hence, they are the proper and necessary parties to the suit. They should be impleaded as defendant Nos.1(a) to 1(d) and defendant No.5(a) to (e) in the suit. The right to sue devolves upon them.

10. On going through the order sheet dtd: 30-07-2024 it reveals that, the learned counsel for the plaintiffs has filed a memo reporting the death of defendant Nos.1 and 5. On going through the above, this court is of the view that, the suit is one for partition, the right to sue survives on the legal heirs of the deceased defendant Nos.1 and 5 after their death, hence the legal heirs of the deceased

defendant Nos.1 and 5 are necessary parties to the suit. The present suit is one for partition, the cause of action survives on the legal heirs of the deceased defendant Nos.1 and 5. Therefore they are the necessary parties to the suit. If the applications are allowed, no hardship or loss will be caused to the other side or else if the applications are not allowed, they will be put to great hardship. Hence, this court is of the view that the plaintiffs have made out sufficient grounds to allow the applications. Accordingly, **point No.1 is answered in the affirmative.**

11. **POINT NO.2:** In view of my discussions made in point No.1, I proceed to pass the following:

ORDER

I.A Nos.XV and XVI filed by the plaintiffs are hereby allowed.

The proposed defendants mentioned in the application, who are the legal heirs of the deceased defendant Nos.1 and 5 are impleaded as defendant Nos.1(a) to 1(d) and defendant Nos.5(a) to (e) in the suit.

For amendment and amended plaint
by :

1st Addl. Sr.C.J & JMFC.,
Ranebennur.