

**ORDERS ON I.A.Nos.XIV TO
XIX**

The learned counsel for the plaintiffs has filed I.A.No.XIV & XVII U/Order XXII Rule 4 of CPC, praying to implead the proposed defendant Nos.6(a) to 6(i) and proposed defendant Nos.15(a) to (c) in this suit.

2. The learned counsel for the plaintiffs has filed I.A.No.XV and XVIII U/Order XXII Rule 9 of CPC praying to set aside the abatement if the suit is abated consequent on the death of the defendant Nos.6 and 15 in the above case and to grant such other and further reliefs as the circumstances of the case may be require.

3. The learned counsel for the plaintiffs has filed I.A.No.XVI and XIX U/Section 5 of Limitation Act, praying to condone the delay in filing the impleading application in the above suit.

4. In the affidavit filed separately in support of the above I.As, the plaintiff No.3 has stated that, they have filed the present suit against the defendants for the relief of partition of their legitimate half share in the suit A schedule properties and the said suit came to be decreed on 16-09-2017. As against the said judgment, the defendant No.9 preferred an appeal before the Hon'ble Dharwad High Court in RFA No.100009/2018(PAR/POS). The Hon'ble High court of Dharwad has set aside the judgment and preliminary decree dtd: 16-09-2017 and directed to restore the said case and directed to consider the entire evidence on record and pass appropriate judgment. During the pendency of the said appeal, the defendant No.6 Smt. Sundaramma W/o: Somappa Amaravati and defendant No.15 Shivppa S/o: Basappa Karjagi were died on 20-09-2014 and 02-03-2019 leaving behind the proposed defendant

Nos.6(a) to 6(i) and proposed defendant Nos.15(a) to (c) as their legal heirs. Since the said case was pending before the Hon'ble High Court, they were not impleaded the proposed defendants, which is not intentional. As per the direction of the Hon'ble High Court, the parties have to appear before the court on 27-10-2025. As such, it is necessary to implead the proposed defendants in the suit. The proposed defendants being the legal heirs of the deceased defendant Nos.6 and 15 are the necessary parties to the said suit. The suit is one for partition, hence suit cannot not be abated, but in abundant caution the accompanying application is filed. The delay to implead them on record is not intentional and deliberate. 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 defendant Nos.6(b), 6(f) and 15(c) have not appeared, hence remained absent. Except them the remaining proposed defendants were appeared through their counsels but not filed objections to the said applications. The remaining defendants also not chosen to file any objections to the said application. The learned counsel for the defendant Nos.9, 12, 13 and 17 submitted no objection 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.XIV to XIX 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 and for declaration. The plaintiffs have filed I.A.Nos.XIV to XIX praying to implead the proposed defendants as legal heirs of deceased defendant Nos.6 and 15 in the suit after setting aside the abatement and condoning the delay in filing the said applications. In the affidavit filed in support of the application, the plaintiff No.3 has stated that, the defendant Nos.6 and 15 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.6(a) to 6(i) and 15(a) to (c) in the suit. The right to sue survives against them.

10. On going through the order sheet, it reveals that, during the pendency of RFA No.100009/2018 the defendant Nos.6 and 15 died on 20-09-2014 and 02-03-2019 respectively. On going through the above, this court is of the view that, the suit is one for partition, the right to sue survives against the legal heirs of the deceased defendant Nos.6 and 15 after their death. All the co-shares are necessary parties to a suit for partition. Hence the legal heirs of the deceased defendant Nos.6 and 15 are necessary parties to the suit. The present suit is one for partition, the cause of action survives against the legal heirs of the deceased defendant Nos.6 and 15. 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 in point No.1, I proceed pass the following:

ORDER

I.A Nos.XIV to XIX filed by the plaintiffs are hereby allowed.

The proposed defendants mentioned in the application, who are the legal heirs of the deceased defendant Nos.6 and 15 are impleaded as defendant Nos.6(a) to 6(i) and 15(a) to (c), in the suit.

The abatement order is hereby set aside and the delay in filing the impleading application is hereby condoned.

For amendment and amended plaint by:

2nd Addl. Sr.C.J & JMFC.,
Ranebennur.