

IN THE COURT OF THE SENIOR CIVIL JUDGE AND J.M.F.C.
AT JEWARGI.

PRESENT: Sri. Sandeep A. Naik B.A., LL.B.,(Spl.)
Senior Civil Judge & J.M.F.C.,
Jewargi.

Dated This the 1st Day of March- 2025

LAC NO.04/2020

CLAIMANT :

Shantappa
S/o Gurappa,
Age: 65 years, Occ: Agriculture,
R/o Kallur B, Tq: Jewargi,
Dist: Kalaburagi.

.....(Claimant Sri.S.S.P., Advocate)

V/s.

RESPONDENTS :

1. The Deputy Commissioner
Kalaburagi.
2. The Special Land Acquisition Officer,
Krishna Upper Project Bhimarayangudi,
Tq. Shahapur, Dist: Yadgir.

.....(R-1 By Sri. ADGP)

.....(R-2 By Sri. R.T.K., Advocate)

PARTIES TO IA NO.1 TO 3

Applicants/

proposed petitioners:

Smt.Siddamma and Others

V/s.

Opponents/

respondent s:

SLAO B.Gudi and Another

**Common Order on I.A. No.1 to 3 filed by the
applicants/proposed petitioners to come on record as LRs of
deceased petitioner Shantappa**

1. The applicants/proposed petitioner No.1(a) to 1(c) have filed I.A. No.1 U/o.22 rule 4 of C.P.C., to come on record as legal representatives of the deceased Shantappa S/o Gurappa on record.

2. The applicants/proposed petitioner No.1(a) to 1(c) have filed I.A. No.2 U/o.22 rule 9(2) R/w Sec.151 of C.P.C., to set aside abatement if any caused in filing the application.

3. The applicants/proposed petitioner No.1(a) to 1(c) have filed I.A. No.3 U/Sec.5 of the Limitation Act, to condone delay in filing the applications.

4. Perused IA.s, affidavits annex with IAs, wherein applicant/proposed petitioner No.1(a) sworn to the affidavits and urged common grounds stating that she is the legally wedded wife of deceased Shantappa. The said Shantappa died on 01-02-1996 leaving behind them as his legal representatives. The right to sue survives to them to proceed against respondents since they are the only legal representatives of petitioner- Shantappa and have succeeded to the estate of deceased Shantappa. Therefore, it is necessary to permit them to come on record. She further stated that death of her husband is recently brought to the notice of Hon'ble Court since they are unaware of legal proceedings and had no legal knowledge. Therefore, abatement caused may be set aside

and delay of 9303 days may be condoned. Therefore, they pray to allow the applications.

5. L/ADGP for respondent No.1 filed objection to the application contending that application is not maintainable since it is time barred. There is a delay of 9303 days in filing the applications. The petitioners have not shown sufficient reasons to allow the applications nor shown reasonable grounds to condone the delay. Therefore, prayed to reject the application.

6. Heard both sides. The points that would arise for my consideration are as under:

1. Whether IA No.1 filed U/o 22 Rule 4 of C.P.C and I.A. No.2 filed U/o.22 rule 9(2) R/w Sec.151 of C.P.C. and I.A. No.3 filed U/sec.5 of the Limitation Act, filed by applicants are deserves to be allowed?

2. What order?

7. On considering IA, IA affidavits and in the light of arguments advanced, my answers to the above points are as fallows;

8. My answer to above points are as fallows;

Point No.1: In the Affirmative.

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

REASONS

9. Point No.1: The present petition is filed by petitioner seeking enhancement of compensation. The petitioners aggrieved by the award passed by the SLAO have filed reference petition under section 18

(1) before SLAO to refer the matter to the Civil Court. The records disclose that land belongs to the applicants was acquired by respondents authorities for the purpose of public purpose. The record discloses that 4(1) notification was issued on 19-04-2005, whereas 6(1)-final notification was issued on 16-08-2006 and award was passed on 09-09-2008. Thereafter, applicant No.1 Siddamma claiming to be LR of Shantappa moved 18(1) - reference petition on 18-02-2009 and thereafter SLAO has referred the petition. Thereafter, present case is registered.

10. Admittedly, as per the case of applicant deceased Shantappa S/o Guranna died in the year 1996 itself but it appears that since acquired land was standing in the name of Shantappa as such in the acquisition papers name of Shantappa was continued and even present case is registered in the name of Shantappa by LRs. It is necessary to mention here that provision of order 22 Rule 4 of CPC and order 22 Rule 9 of CPC are applicable when a party to a proceedings dies during pendency of the case but herein the present case said Shantappa died in the year 1996 i.e. much prior to acquisition of property. Since said Shantappa died much prior to the acquisition proceedings as such petitioners were ought to have filed applications under correct provision i.e., under order 1 rule 10 of CPC but have filed this application u/o 22 Rule 4 of CPC which is incorrect. However, mere quoting of wrong provision does not disentitle the petitioners from claiming the relief. No doubt, petitioners contended that there is delay of 9303 days. But in fact there no such delay since deceased Shantappa died much prior to the date of acquisition proceedings.

11. It is necessary to refer the decision reported in **(2017) 9 SCC 700 in between Pankajbhai Rameshbhai Zalavadiya -Vs- Jethabhai Kalabhai Zalavadiya** wherein the Hon'ble Court pleased to held as under;

“Merely because the earlier application filed by the appellant under order 22 rule 4 of the code was dismissed as not maintainable, it will not prohibit the plaintiff from filing another application, which is maintainable in law. There was no adjudication of the application to bring legal representatives on record on merits by virtue of the earlier order. On the other hand, the earlier application filed under order 22 rule 4 was dismissed by the trial court as not maintainable, in as much as Def. No.7 had died prior to the filing of the suit since order 22 rule 4 comes into the picture only when a party dies during the pendency of the suit. The only course open to the appellant in law was to file an application for impleading to bring on record the legal representatives of deceased Def. No.7 under order 1 rule 10 of the code hence the order passed by the trial court on the application filed in the Order 22 rule 4 will not act as a res-judicata.

It was further held that order 22 rule 4 applies only in case where death of one of the several defendants or the sole defendant occurs during the subsistence of the suit. If one of the defendants has expired prior to the filing of the suit, the legal representatives of such deceased defendant cannot be brought on record in the suit under order 22 or 4. Therefore, trial court has rightly dismissed the application under order 22 rule 4 the code as not maintainable at an earliest point of time.

The Hon'ble court further held that order 1 rule 10 of the code enables the court to add any person as a party at any stage of the proceedings, if the person whose presence in court is necessary in order to enable the court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of multiplicity of proceedings is also one of the objects of the said provision. Order 1 rule 10 of code empowers the court to substitute a party in the suit who is a wrong person with the right person. If the court is satisfied that the suit has been instituted through a bonafide mistake, and also that it is necessary for the determination of the real matter in controversy to substitute a party in the suit, it may direct it to be done. In the matter in hand, the sale was made in favour of defendant No.7, and the validity of the sale deed was the subject matter of the suit. The purchaser of the property though dead at the time of filing the suit, was made one of the defendants erroneously. Normally, if the plaintiff had known about the death of one of the

defendants at the time of institution of the suit, he would have filed a suit in the first instance against his heirs, or legal representatives. Who are now sought to be impleaded under order 1 rule 10 as the legal representatives of the deceased. Therefore, presence of the legal representatives of deceased is necessary in order to enable the court to effectively and completely adjudicate upon and settle all the questions in the suit. Their presence is necessary in the suit for the determination of the real matter in dispute. Therefore, they are needed to be brought on record, of course, subject to the law of limitation, as contained under section 21 of the Limitation Act. Since one of the defendants has expired prior to the filing of the suit, there is no legal impediment in impeding the legal representatives of the deceased party under order 1 to 10 of the code, for the simple reason that the plaintiff in any case could have instituted a fresh suit against these legal representatives on the date he moved an application for making them parties, subject of course to the law of limitation.

The Hon'ble court further held that, the trial court, at the point of time when it dismissed the application under order 22 to 4 of the code as not maintainable, would have treated the said application under order 22 rule 4 as one filed under order 1 rule 10 of CPC, in order to do justice between the parties. Merely because of the non mentioning of the correct provision as order 1 rule 10 at the initial stage, by the advocate for the plaintiff, the parties should not be made to suffer. It is by now well settled that a mere wrong mention of the provision in the application would not prohibit a party to the litigation from getting justice. Ultimately, the courts are meant to do justice and not to decide the applications based on technicalities. The provision under order 1 rule 10 of cpc speaks about judicial discretion of the court to strike out or add parties at any stage of the suit. It can strike out any party who is improperly joined, it can add anyone as a plaintiff or defendant if it finds that such person is a necessary or proper party. The court under order 1 rule 10(2) will of course act according to reason and fair play and not according to Whims and caprice.

12. Thus in view of the aforesaid decision in order to do justice in the present case it is necessary to permit the applicants to come or record as parties to the present case. Hence, considering all these aspects, I'm of the view that the applicants have made sufficient ground for allowing the applications. Hence, the applications filed by the applicants are deserves to be allowed. ***Hence, I have answered the Point No.1 in the Affirmative.***

13. Point No.2:- For the findings given on Point No.1, I proceed to pass the following

:: ORDER ::

The IA No.1 to 3 filed by the applicants are hereby allowed.

The applicants are permitted to come on record as petitioner No.1(a) to 1(c).

The petitioners are permitted to carryout necessary amendment in the original petition and to furnish the amended petition copy.

Call on 14-03-2025.

(Dictated to the Stenographer directly on computer, typed by him, corrected and then pronounced by me in the Open Court on this 1st Day of March-2025)

(Sandeep.A.Naik)
Senior C.J. & JMFC,
Jewargi.