

**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC
SEDAM**

PRESENT: SRI. VIJAYKUMAR S. JATLA

B.Sc., LL.B.

Senior Civil Judge & JMFC Sedam

DATED THIS THE 29th DAY OF NOVEMBER-2022.

O.S.No.39/2017

Plaintiffs : Basawanthreddy and others.

// Versus //

Defendants : Venkatayya and others.

**Common Orders on I.A.No-6 U/O 22 Rule 4 of CPC, IA No.12
U/O 22 Rule 9(2) of CPC and IA No.13 U/s. 5 of Limitation Act,
respectively, filed by Plaintiffs.**

These interlocutory applications are filed by the plaintiffs for bringing the following persons as Legal Representatives of the deceased defendant No.1 by name Venkatayya S/o Mukundayya by setting aside the abatement order and by condoning delay in filing L.R petition.

The proposed LR's of Defendant No.1 is as follows.

D1(a). Smt.Gowramma W/o Late Mukundrao Kusuma, Age: 54 years, Occ: Household, R/o Mudhol, Tq: Sedam, Dist: Kalaburagi.

D1(b) Rakeshkumar S/o Late Mukundam Kusuma, Age: 29 years, R/o Mudhol, Tq: Sedam, Dist: Kalaburagi.

D1(c) Reshma D/o Late Mukundam Kusuma, Age: 25 years, Occ: Household, R/o Mudhol, Tq: Sedam, Dist: Kalaburagi.

D1(d) Smt.Sumitra W/o Late Satyanarayan Kusuma, Age: 51 years, Occ: Household, R/o Mudhol, Tq: Sedam, Dist: Kalaburagi.

D1(e) Pinkemma W/o Not Known D/o late Satyanarayan Kusuma, Age; Major, Occ: Household, R/o Mudhol, Tq: Sedam. Dist: Kalaburagi.

D1(f) Mukund S/o Late Satyanarayan Kusuma, Age: 30 years, Occ: Pvt. Service, R/o Mudhol, Tq: Sedam, Dist: Kalaburagi.

D1(g) Ashwini D/o Late Satyanarayan Kusuma, Age: Major, Occ: Household, R/o Mudhol, Tq: Sedam, Dist: Kalaburagi.

D1(h) Sharan Shekar S/o Late Venkataya Kusuma, Age: 51 years, Occ: Agriculture, R/o Mudhol, Tq: Sedam, Dist: Kalaburagi.

D1(i) Vishnu S/o Late Venkatayya Kusuma, Age: Major, Occ: Agriculture, R/o Mudhol, Tq: Sedam, Dist: Kalaburagi.

D1(j) Veeramma W/o Narayana D/o Venkatayya Kusuma, Age: 60 years, Occ: Agriculture, R/o Mudhol, Tq: Sedam, Dist: Kalaburagi.

D1(k) Anusuja W/o Narshimulu D/o Venkatayya Kusuma, Age: 58 years, Occ: Agriculture, R/o Mudhol, Tq: Sedam, Dist: Kalaburagi.

D1(l) Prabhavati W/o Ramaswamy D/o Venkatayya Kusuma, Age: 56 years, Occ: Agriculture, R/o Mudhol, Tq: Sedam, Dist: Kalaburagi.

2. Advocate for plaintiffs contended that, the defendant No.1 died on 14.9.2019 and plaintiffs tried to collect the address of the defendant No.1's legal heirs daughters and grand daughters who are given in marriage and they are living in their husbands houses. The right to sue survived against the legal heirs of defendant No.1. Therefore, the legal heirs of the defendant No.1 are to be brought on record. The deceased defendant No.2 left the legal heirs as shown

in the petition. The presence of defendant No.1's legal heirs is very much necessary as the right to sue survived to plaintiffs against the legal representatives. So, they are necessary to be brought on record. The plaintiffs could not get the address of the daughters of defendant No.1 and grand daughters. Therefore, the last known address Mudhol is given in the cause title. Hence, it would be just and proper to bring the legal heirs of defendant No.1 on record. The delay is caused due to the above reason. Since the application is not filed within time the suit against defendant No.1 is abated. The applications filed belatedly due to delay in collection of address. The delay is not intentional one. But due to the above said reason. If the applications are allowed no prejudice will be caused to other side. If the applications are not allowed, the plaintiffs will be put to great loss or injury. Hence, sought for allowing I.A.No.6, 12 and 13.

3. The objections not filed by the L.Rs of defendant No.1.

4. On the basis of the above pleadings and on hearing of plaintiffs side, the following points arise for my consideration are:

- 1) Whether the plaintiffs have made out grounds to allow I.A.No.6 U/O 22 Rule 4 of CPC, IA No.12 U/O 22 Rule 9(2) of CPC and IA No.13 U/s. 5 of Limitation Act respectively?
- 2) What order?

5. My findings on the above points are as under:

Point No:1 : In the Affirmative.

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

REASONS

6. **Point No.1:-** The case of the plaintiffs is as discussed above.

This is a suit for declaration and injunction and possession in the respect of suit schedule properties against the defendants. These applications are filed by the plaintiffs for bringing LR's of defendant No.1 on record on account of death of defendant No.1 by setting aside the abatement order by condoning the delay in filing the L.R petition.

7. Advocate for plaintiffs contended that the proposed LR's of defendant No.1 i.e., D.1(a) to (I) are very much essential for proper adjudication of the matter as the defendant No.1 died leaving behind the present L.Rs who are the daughters and grand daughters of defendant No.1. If the applications are not allowed then the plaintiffs will put to greater hardship and it will leads to multiplicity of proceedings.

8. On perusal of the I.A No.6, 12, 13 it is seen that the defendant No.1 died leaving behind his L.Rs i.e., proposed L.Rs No.D.1(a) to (I). After the death of defendant No.1 present applications are filed by

the plaintiffs. The plaintiffs contended that the delay is unintentional one. The proposed defendants are very much essential for proper adjudication of dispute as the proposed defendants not contested the case and placed exparte. If the I.A No.6, 12 and 13 are not allowed the plaintiffs are deprived of put forth their case effectively and it will leads to multiplicity of proceedings. The plaintiffs made out the valid and justifiable grounds to allow I.A No.6 U/O 22 Rule 4 of CPC, IA No.12 U/O 22 Rule 9(2) of CPC and IA No.13 U/s.5 of Limitation Act respectively. In the light of above reasons **I answer Point No.1 in the Affirmative.**

9. Point No.2:- As I have answered point No. 1 in the Affirmative for the foregoing reasons, I proceed to pass the following:

ORDER

IA-6 Under Order 22 Rule 4 of CPC is allowed. The plaintiffs are permitted to bring the L.Rs of defendant No.1 on record as defendant No.1(a) to (l).

I.A No.12 Under order 22 Rule 9(2) of CPC is allowed. Further the abatement order is set-aside.

I.A No.13 U/Sec. 5 of Limitation Act filed by the plaintiffs is allowed. The delay in filing the application is condoned.

(Dictated to the Stenographer directly on computer and corrected and then pronounced by me, in the open Court on this the **29th day of November-2022**, at Sedam)

(Vijaykumar.S.Jatla)
Senior Civil Judge & JMFC,
Sedam.