

ORDERS ON IA NO.3 to 5

The counsel for plaintiffs have filed IA NO.3 Under Order 22 Rule 4 R/W Sec. 151 of CPC., to bring the lrs of defendant NO.1(a) to (f) on record. IA No.4 Under Order 22 Rule 9 R/w Sec. 151 of CPC., to set aside the abatement as against the defendant in the above case by allowing the application. IA No.5 Under Section 5 of Limitation Act to condone the delay in filing the application to bring the lrs of defendant by allowing the applications.

2. It is submitted in the annexed affidavits, the plaintiff has filed this suit for the relief of specific performance of contract based on sale agreement dated 04.02.2021. During the pendency of the suit the defendant died leaving behind his wife and children as his legal heirs to succeed his estate. The lrs of defendant NO.1(a) to (f) are none other than legal heirs of defendant who are wife and daughters of deceased defendant. Now the lrs of defendant are necessary and proper parties to the suit. Therefore, they may to be brought on record.

3. It is further submitted that due to lack of knowledge much less legal knowledge he do not know the procedure of the Court and to make necessary application. It is only last week when he was discussing with his counsel about the case and the death of defendant and advised him to make necessary application to effect the lrs of defendant has to be brought on record.

4. It is submitted that non filing of the necessary application to bring the lrs on record within time is not intentional one but for the bonafide reason. Therefore, it is requested to allow the applications.

5. On the other hand, the lrs of defendant has filed common objections to the above applications and contending that the defendant namely D.V.Venkataramana reddy was died on 27.06.2022 and the present suit filed by the plaintiff on 03.09.2022 prior to the filing of present suit the defendant is died, the plaintiff has filed above case on death person. Hence, the statement given by the plaintiff in his affidavit is false and imaginary one and plaintiff has no personal knowledge about

the defendant in the above case. On these grounds applications are deserves to be dismissed.

6. Heard the arguments and perused the records it appears that plaintiff has filed above suit for the relief of specific performance of contract against the defendant based on agreement of sale dated 04.02.2021. After issuing the suit summons it was reported that defendant was dead. Subsequently, counsel for plaintiff filed applications to bring the lrs of defendant on record. The contention of the lrs of defendant is that the suit was filed on 03.09.2022, but the defendant was died on 27.06.2022 which is prior to filing the present suit. Therefore, suit against dead person is not maintainable. Hence applications are not maintainable. However, the suit is for the relief of specific performance of contract based on agreement of sale the valuable rights of the plaintiff involved in the present suit. At this stage if applications filed by the plaintiff to bring the lrs of defendant on record are rejected it will cause injustice to the plaintiff. On the other hand no hardship would be caused to the lrs of

defendant. If the applications are allowed. Looking to the facts and circumstances of the case I proceed to pass the following;

ORDER

IA No.3 filed by the plaintiff Under Order 22 Rule 4 R/W Sec. 151 of CPC., is hereby allowed.

IA No.4 filed by the plaintiff Under 22 Rule 9 R/W Sec. 151 of CPC., is hereby allowed.

IA No.5 filed by the plaintiff Under Section 5 of Limitation Act is hereby allowed.

Abatement of suit against lrs of defendant is set aside.

Delay is condoned for filing of lrs of application.

Counsel for plaintiff is permitted to bring the lrs of defendant on record.

Posted for amendment of plaint.

Call on: 03.12.2025.

Sd/-

(DAYANAND.M.BELURE)
Senior Civil Judge Malur.