

ORDERS ON I.A.NO.I

This is an application filed by the plaintiff seeking an order to bring the legal representatives of the deceased defendant No.1 on record.

2. The application is supported with the affidavit of the plaintiff. In her affidavit, she has stated that the present suit has been filed by the plaintiff seeking the relief of partition and separate possession in respect of the suit properties. It is stated that this defendant No.1 was died on 28.05.2017 and without bringing the legal heirs of the deceased defendant No.1, the suit will be infructuous. It is further submitted that if this application is allowed and those legal heirs are brought on record, no loss or injury will be caused to the other side. Hence, it is urged to allow the application.

3. After filing this application, this Court had issued the notices to the proposed defendant No.1(a) to (d). The said proposed defendant No.1(a) to (d) have appeared before the Court and filed their statement of objections. The said averments in brief are as under:-

It is submitted that these persons are the legal heirs of the deceased defendant No.1 and the plaintiffs have filed a false suit against the defendants only to make unlawful gain. It is alleged that the plaintiffs have already taken of their shares at the time of their marriage by way of golden ornaments and cash. Hence, they have no right to claim any share. It is further stated that the

plaintiffs have made these legal heirs of the defendant No.1 as unnecessary parties in the present suit. By stating these grounds, it is prayed for rejection of the application.

4. Heard the arguments on both the sides.

5. The following points would arise for my consideration:-

1) Whether the plaintiffs have made out grounds to allow this application and thereby to add the legal representatives of the deceased defendant No.1 as defendants in the present suit?

2) What order?

6. My findings to the above said points are as follows:-

Point No.1 :- In the Negative

Point No.2 :- As per final order,

for the following :-

REASONS

7. **Point No.1** :- It is very important thing to note that the present suit has been filed by the plaintiff seeking the relief of partition and separate possession in respect of the suit properties. At the time of filing the suit, the plaintiffs have made the defendant No.1 as one of the party in the present suit. However, he was reported to be dead and the same was communicated to this Court on 15.06.2017 itself. However, this plaintiff has taken the steps to bring the legal representatives of the deceased defendant No.1 on

23.10.2017. After filing this application, this Court has issued the notices to the legal representatives of the deceased defendant No.1. Though, they have appeared, they have not denied the contention taken by the plaintiff that they are the legal heirs of the deceased defendant No.1. But, they denied the application on the other grounds.

8. It is to be noted that the case against the defendant No.1 has been abated in view of the fact that the application to bring the legal heirs was filed after a lapse of 128 days from the date of reporting the death of the defendant No.1. Absolutely, no application under Order 22 rule 9(2) of CPC has been filed by the plaintiff to bring the legal heirs of the deceased on record by setting aside the order of abatement. AS the legal heirs are to be brought on record within ninety days from the date of information and if the legal heirs are not brought on record, there will be statutory abatement occurs. Admittedly, no applications were filed to set aside order of abatement and to condone the delay. Hence, on this ground, application is liable to be dismissed. Accordingly, I **answer this point in the Negative.**

9. **Point No.2** :- As per the discussion made on Point No.1, this Court has come to the conclusion that the application is liable to be dismissed. Hence, I proceed to pass the following:-

ORDER

The application U/o.22 Rule 4 r/w
Sec.151 of CPC filed by the plaintiff is hereby
dismissed.

No order as to costs.

For issues by:-

Senior Civil Judge,
Maddur.