

COMMON ORDERS ON THE APPLICATIONS FILED BY THE PLAINTIFF U/ORDER XXII RULE 9 OF CPC, U/ORDER XXII RULE 4 R/W SEC.151 OF CPC AND U/SECTION 5 OF LIMITATION ACT (6 IN NO'S) TO BRING THE LR'S OF DEFENDANT NO.3 AND 5 ON RECORD AND ON THE APPLICATION FILED BY THE DEFENDANT NO.7 UNDER ORDER XXII RULE 4(3) R/W SECTION 151 OF CPC.

The plaintiff filed applications U/Order XXII Rule 9 of CPC seeking for an order to set aside the abatement against the defendant No.3 and 5.

The application U/Order XXII Rule 4 R/w Sec.151 of CPC seeking permission to bring the LRS of defendant No.3 and 5 on record.

Also filed application U/Section 5 of Limitation Act, praying to condone the delay in bringing the LRs of defendant No.3 and 5 on record.

2. In the affidavits annexed to the applications filed by the plaintiff to bring the legal heirs of defendant No.3 it is submitted that, the defendant No.3 died on 04.09.2023 as reported by the counsel for the defendant on 06.10.2023. The wife of defendant No.3 already on record as defendant No.4 and hence only the children were sought to be brought on record under these applications. As the suit is one for specific performance of contract and the transaction took place more than 18 years ago and plaintiff have not had a good relationship with the defendants due to this litigation and hence it was arduous to ascertain the present whereabouts of the legal representatives to bring them on record and hence, there was a delay in the filing the applications. The delay is due to aforesaid bonafide reasons and not intentional. Right to sue survives on the legal representative of defendant No.3 and hence prays to allow aforesaid applications.

3. In the annexed affidavits to the applications filed by the plaintiff to bring the legal heirs of defendant No.5 it is submitted that, the defendant No.5 passed away on 27.11.2022 and the wife has already on record as defendant No.6 and the present application is filed to bring his children on record. The fact of demise of defendant No.5 was came to the knowledge of the plaintiff when he was making efforts to collect the details of legal representative of defendant No.3. Moreover, the counsel for the

defendants utterly failed to report the death of defendant No.5. As the transaction between the plaintiff and defendants took place 18 years ago and the plaintiff not in good terms with the defendants, there is a delay in ascertaining the details of legal representatives and bring them on record. The right to suit survives on legal representatives of the defendant No.5. Hence prayed to allow the applications by condoning the delay and by setting aside the abatement.

4. The proposed defendant No.3(a) and 5(a) filed similar objections contending that the applications are devoid of pith and substance and liable to be dismissed. The application is filed belatedly inspite of the knowledge about the death of defendant No.3 and 5. The plaintiff not mentioned the wives of the deceased defendant No. 3 and 5 as legal representative in the applications or by filing separate memo. Hence the same has to be rejected. There is an inordinate delay beyond 517 days and the plaintiff is not approached the court with clean hands. The plaintiff filed present applications only after presentation of application under order XXII Rule 4(3) of CPC by the defendants. Therefore, there is no merit in the applications. If the applications are allowed, the proposed legal representative of defendant No.3 (a) and 5(a) will be put to great hardship. Hence, prays to reject the applications.

5. The proposed defendant No.3(b) adopted the aforesaid objections by filing a memo.

6. The defendant No.7 filed the application Under order XXII Rule 4(3) R/W Section 151 Of CPC seeking to dismiss the suit against the defendant No.3 as abated in lieu of non-filing of necessary application to bring the LRs of defendant No.3 on record.

7. In the affidavit annexed to the application the defendant No.7 submitted that, the defendant No.3 passed away on 04.09.2023 which was reported on 08.09.2023. The plaintiff did not take steps against the legal representative of deceased defendant No.3 within a period of 90 days from his death. Therefore, the suit against defendant No.3 got automatically abated by operation of law. Hence, accompanying application is maintained to assist the court. The plaintiff filed application on 05.01.2024 Under order XXII Rule 10(a) of CPC which is not the LR application. By efflux of time the stipulated 90 days got completed and original suit automatically abated. Hence, prays to allow the application.

8. The plaintiff filed objection denying the affidavit averments of defendant No.7 and contended that there is a long gap of 18 years from the original transaction with the defendants and the plaintiff is not in contact with the defendant. Therefore,

the plaintiff filed an application seeking details of legal representative of the deceased for which the defendants intentionally kept quit even though they are full blood brothers and closely related to each other and now seeking abatement of suit on technical grounds. The application is filed only to cause delay and harass the plaintiff and hence, prays to reject the same.

9. Perused the materials on record. Heard both side.

10. Now the points that would arise for my consideration are as follows;

POINTS

1. Whether the plaintiff made out any good grounds to allow the applications filed U/Order XXII Rule 9 of CPC, U/Order XXII Rule 4 R/w Sec.151 of CPC and U/Section 5 of limitation Act to brings to LRs of defendant No.3 and 5 on record?
2. Whether the defendant No.7 made out any good ground to allow the application filed under order XXII Rule 4(3) R/ W Section 151 Of Cpc.
3. What order ?

11. My *findings to the above points are as under:*

Point No.1 : in the "Affirmative"

Point No.2 : in the "Negative"

*Point No.3 : As per the final order
for the following :*

REASONS

12. **Point No.1:** The suit is one for specific performance of contract. The death of defendant No.3 was reported by counsel for the defendant No.3 by filing a memo dated 06.10.2023. These applications were filed on 26.07.2024. No doubt there is a delay in filing the present applications. It is pertinent to note that on 05.01.2024 the plaintiff filed an application seeking details of legal heirs of defendant No.3 from the counsel for defendant No.2 to 8. The defendant No.2 to 8 filed detailed objection on 16.02.2024 and not furnished any details of legal heirs of defendant No.3 as sought for by the counsel for plaintiff.

13. On perusal of the objection it is seen that, instead of furnishing the details of the legal heirs of defendant No.3, the counsel for defendant No.2 filed the detailed objection to the said application.

14. As stated by the plaintiff in his affidavit accompanying the aforesaid applications, the suit is one for specific performance of contract and obviously the agreement holder

may not be having knowledge about the family members of the opposite party as it is not the suit for partition or the suit between a family members. It is the duty of the counsels appearing for the parties to furnish the details of legal representatives in case of death of a party to whom they represent. The right to sue survives on the legal representative of defendant No.3 and 5. Such being the case, it is necessary to allow the applications by condoning the delay and by setting aside the abatement. Therefore the objection of the defendants can not be accepted. Hence, I answer Point No.1 in the **Affirmative**.

15. **Point No.2:** The suit is one for specific performance of contract. No doubt the suit is abated against the defendant No.3 and 5 as their LRs were not brought on record in time. However, the plaintiff filed necessary applications to bring the LR of No.3 and 5 on record which was allowed by this court. Therefore this application does not survive for consideration. Hence I answer Point No.2 in the **Negative**.

16. **Point No.3:-** In view of my answers to Point No.1 in the "**Affirmative**", and point No.2 in the **Negative**. I proceed to pass the following;

ORDER

The applications filed by the plaintiff U/Order

XXII Rule 9 of CPC, U/Order XXII Rule 4 R/w Sec.151 of CPC And U/Section 5 of Limitation Act to bring the legal representatives of defendant No.3 and 5 on record are hereby allowed. The delay in bringing the LRs of defendant No.3 and 5 is condoned and abatement is set aside. Plaintiff is permitted to bring the LRs of defendant No.3 and 5 on record.

The application filed by the defendant No.7 Under order XXII Rule 4(3) R/w Section 151 Of CPC is hereby rejected.

The plaintiff to carryout the amendment and file amended plaint Call on 06.09.2025.

Judge,
Court of Addl. S.C., & MACT
Mysuru