

ORDER

1. This order shall dispose off an application under Order 22 Rule 4 R/W Section 151 CPC moved on behalf of plaintiff with the prayer to bring on record the LR's of deceased defendant No.1.

2. No reply has been on behalf of LR's of deceased defendant No.1.

3. I have heard the submissions and gone through the record.

4. Admittedly, the present suit is filed by the plaintiff against the defendant seeking for the relief of partition and separate possession and other consequential reliefs. It is also admitted fact that the defendant No.1 was passed away on 26.07.2021.

5. According to Order 22, Rule 4 of Civil Procedure Code, when the defendant is passed away leaving behind his legal representatives and if the right to sue survives on them, they can be permitted to prosecute the matter for and on behalf of their father by the plaintiff by making them as a party to the matter. According Article 120 of Limitation Act, an application for bringing the legal representatives of the deceased defendant has to be filed within 90 days from the death of defendant. If at all the application for bringing the legal representatives of the deceased defendant is not filed

within 90 days, automatically suit will abates as far as the deceased defendant is concerned.

6. In the present case on hand, defendant was passed away on 26.07.2021. So the application ought to have filed on or before 26.10.2021 for bringing the legal representatives of deceased defendant. But, I.A. No.VII is filed on 22.09.2021 for bringing the legal representatives on record. So, I.A No.VII is filed in time.

7. The legal heirs of deceased defendant No.1 have not filed objections disputing the relationship with deceased defendant. So under the facts and circumstances of the case, I am of the opinion that applicant is to make out ground for allow the application filed for bringing the legal representatives of deceased defendant on record. It is well settled principles of law that substantial justice should not be denied merely for the technical reasons.

8. The right to sue the LR's of deceased defendant survives because it is a suit for partition and separate possession. Therefore, the application under Order 22 Rule 4 for bringing on record the LR's of deceased defendant is also allowed in the interest of justice. The plaintiff is directed to file the amended plaint incorporating the name of LR's of defendant.

For amended pliant

Call on 14.03.2022

Senior Civil Judge & JMFC
H.D.Kote