

ORDERS ON IA NO.VII

The applicants filed IA No.VII under Order 22, Rule 3 read with section 151 of Civil Procedure Code praying for permission to bring the legal representatives of deceased plaintiff on record .

02. The application is supported with affidavit of applicant no. 1(B) duly sworn. It is sworn in the affidavit that original plaintiff was passed away on 08.11.2020 leaving behind the proposed Plaintiff No. 1(a) to (g) as his legal heirs and right to sue is survived on them. It is further sworn that proposed legal representatives are the proper and necessary parties in this suit. It is further sworn that if the application is not allowed, the applicants will be put to great hardship and irreparable loss which cannot be compensated in terms of money and prayed for allowing the IA No.VII.

03. The defendants have not filed objection to the application, hence taken as nil. Smt.Shantha submitted that he has no objection to allow the application.

4. Heard arguments on I.A. No. VII on applicants side.

05. Admittedly, the present suit is filed by plaintiff against the defendants seeking for the relief of partition and separate possession. It is also admitted fact that the original plaintiff was passed away on 08.11.2020.

06. According to Order 22, Rule 3 of Civil Procedure Code, when the plaintiff 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. According Article 120 of Limitation Act, an application for bringing the legal representatives of the deceased plaintiff has to be filed within 90 days from the death of plaintiff. If at all the application for bringing the legal representatives of the deceased plaintiff is not filed within 90 days, automatically suit will abates as far as the deceased plaintiff is concerned. Similarly according Order 22, Rule 9 of Civil Procedure code, an application can be filed for setting aside the abatement and according to Article 121 of the Limitation Act, even after suit is abated an application has to be filed within 60 days from the date of abatement for setting aside the abatement.

07. In the present case on hand, original plaintiff was passed away on 08.11.2020. So the application ought to have filed on or before 08.02.2021 for bringing the legal representatives of deceased plaintiff. But I.A No.VII is filed on 18.12.2020 for bringing the legal representatives on record. So I.A No.VII is filed in time.

08. The defendants have not filed any objections to the application. Thus there is no dispute about the relationship of the legal representatives of the deceased plaintiff with the deceased plaintiff. So under the facts and circumstances of the case, I am of the opinion that applicants are able to make out ground for allow the applications filed for bringing the legal representatives of deceased plaintiff on record. It is well settled principles of law that substantial justice should not be denied merely for the technical reasons. Hence, I am of the opinion that I.A No.VII is liable to be allowed. Hence, for the foregoing reasons, I proceed to pass the following:

O R D E R

I.A No.VII filed by the applicants under Order 22, Rule 3 read with section 151 of Civil Procedure Code praying for bringing the legal representatives of deceased plaintiff on record is allowed.

For carrying out amendment and to furnish amended plaint.

Call on 13.01.2021.

(NATARAJ YADAV.S.)
Senior civil Judge & JMFC
H.D.Kote