

ORDERS ON I.A. NO.I TO III

The plaintiff has filed application/I.A. No.I/2022 U/order 22 Rule 4 r/w 151 of CPC seeking permission to bring the legal representatives of deceased defendant No.5 on record to prosecute the suit.

The plaintiff has filed another application/I.A. No.II/2022 is filed U/sec.5 of Limitation Act seeking to condone the delay and allow the application.

Another application/I.A. No.III/2022 U/order 22 Rule 9 of CPC for set-aside the abatement order against the deceased defendant No.5.

Notice of IA No.I to III issued to the L.Rs of deceased defendant No.5. Sri.APS, Advocate filed vakalath for the L.Rs of deceased defendant No.5 i.e., defendant No.5(a) to 5(c).

Heard arguments. Perused the pleadings, affidavit and materials on record.

The point for consideration is whether the relief prayed for in the above applications can be granted?

The above point is answered in the **affirmative** for the following:

REASONS

The suit is filed against the defendants seeking for the relief of partition and separate possession in the suit schedule properties.

During the course of trial, the counsel for plaintiff filed a memo stating that, defendant No.5 was died on 17.03.2021, hence the L.Rs of the deceased defendant No.5 are very essential to the case, since defendant No.5 was died, his legal representatives are to be brought on record, if not so, there is no possible to decide the real controversy between the parties.

On the death of defendant No.5 the cause of action would survive on his L.Rs to condone the delay and to set-aside the abatement who claimed right are on record, for effectually, fully and finally decide the dispute involved in the suit. The opponents can be compensated for the delay in filing these applications by imposing costs. No irreparable injury could be caused to the opponents, if the applications are allowed.

Hence, the point for consideration is answered in the Affirmative. Hence, the following:-

ORDER

I.A. No.I/2022 filed U/order 22 Rule 4 of CPC is hereby allowed.

I.A. No.II/2022 filed U/sec.5 of Limitation Act is hereby allowed on cost of Rs.500/- payable to TLSA, H.D. Kote.

I.A. No.III/2022 filed U/order 22 Rule 9 of CPC is hereby allowed. The abatement is set-aside.

The proposed LRs of deceased defendant No.5 i.e., defendant No.5(a) to 5(c) are brought on record as legal representative of deceased defendant No.5.

The plaintiff shall amend the plaint as indicated in the applications.

For amendment and to furnish amended plaint by 03.09.2024

Addl. Civil Judge and JMFC.,
Heggadadevanakote.