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**IN THE COURT OF THE PRL SENIOR CIVIL  
JUDGE AND JMFC, HUNSUR**

Present: Smt. Zaibunnisa, B.Com., LL.B.,  
Prl. Senior Civil Judge & JMFC  
Hunsur

Dated, this the 28<sup>th</sup> day of June, 2024

**O.S.No.84/2021**

Plaintiffs : Padmamma and others

V/s

Defendants : Shivegowda and others

**IA NO.X and XI**

Applicant/plaintiffs : Padmamma ....plaintiff

V/s

Opponent/defendants : Shivegowda and others

**IA NO.XIII and XIV**

Applicant/plaintiffs : Manjula ... plaintiff No. 2(a)

V/s

Opponent/defendants : Shivegowda and others

**ORDERS ON IA NO. 10, 11, 13 AND 14 FILED BY THE  
APPLICANTS U/O 22 RULE 9 OF CPC AND U/SEC. 5 OF  
LIMITATION ACT, U/o 32 Rule 4, U/O 22 RULE 3 .**

IA No.10 filed U/O 22 Rule 9(1) of CPC to set aside the abatement order. IA No.11 filed U/Sec.5 of Limitation Act to condone the delay of 187 days in filing the IA No.14. IA No.13 filed U/O 32 Rule 4 R/W Sec. 151 of CPC to appoint the plaintiff No.2(a) as minor guardian to plaintiff No.2(b). IA No.14 filed U/o 22 Rule 3

to seeking permission to bring the legal heirs of deceased plaintiff No.2 on record of this case.

2. The applications are supported by the separate affidavits with similar facts sworn to by the plaintiff No.1, wherein she stated that her son the deceased Kumar is her elder son and he was died on 18.11.2022. Due to the pain and shock she could not intimate her counsel and did not bring his wife and children within stipulated period. Except the applicants there are no other legal heirs to the deceased plaintiff No.2 and they are the necessary parties to the suit. Hence, the applications.

3. The applications are opposed by the respondents No. 4 by filing objection wherein it is stated that the applications are not maintainable in the eye of law nor on the basis of fact. The applications are to be filed by the proper persons but the legal heirs of deceased cannot file the applications in piecemeal seeking one relief by one heir and another relief by another heir. Likewise the memo filed to not press the previous IA.No.13 is also not maintainable since, the applicant of IA.No.12 is different than the person who filed the IA not press memo. That the applicants have not produced any materials to show that they are legal heirs of deceased plaintiff No.2. On these grounds defendant No.4 prayed to dismiss the applications with exemplary cost.

4. In view of the objection filed by the applicants, an enquiry is held, plaintiff No.1 is examined as PW-1 and she has been subjected to cross-examination by the learned counsel for defendants.

5. Heard the counsel for the applicants and respondents.

6. On the basis of the above materials the following points arise for my consideration.

*1. Whether the applicants have made out grounds to allow the applications?*

*2. What order?*

7. My answer to the above points are as under;

1. Point No.1: In the Affirmative

2. Point No.2: As per final order for the following:

### **REASONS**

8. **Point No.1:-** On careful and meticulous perusal of the materials available on record it is found that the plaintiffs have filed the above captioned suit seeking for the relief of declaration and such other reliefs. During the pendency of the suit the plaintiff No.2 died due to heart attack on 17-12-2019 by filing memo with liberty to reopen the petition from the original stage. Now the petitioner by name Shivanna is died on 18.11.2022 and his wife and daughter moved the applications on hand seeking permission to come on record and to proceed with the suit in accordance with the law. Only defendant No.4 has barely denied the applications and affidavits averments but no defendants denied the relationship between the applicants and deceased plaintiff No.2 nor they denied their right to proceed in the suit as legal heirs of plaintiff No.2.

9. Admittedly, no contra version is putforth by the defendants to dismiss the applications as sought by them in their objections. But only on the ground of delay to file the applications

same cannot be rejected since the legal representative of the deceased petitioner have themselves voluntarily filed the present applications in order to get themselves impleaded in the present petition. If at all the defendants have any grievance on the point or they dispute the relationship of the plaintiff No.2 with the applicants, the same can be brought to the notice of the court during the course of proceedings. But at this juncture, it is necessary to get the legal representatives of the deceased plaintiff No.2 on record since right to sue survive upon them. Further, the daughter of plaintiff No.2 is a minor, hence, it is very much necessary to permit her mother, the applicant No.1 as her guardian to represent in the suit. Hence, the applications deserve to be allowed. In view of this, I answer point No. 1 in the affirmative.

10. **Point No.2:** In view of the reason assign above I proceed to pass the following;

### **ORDER**

IAs filed U/o 22 Rule 3, 22 Rule 9, of CPC, Sec. 5 of Limitation Act as well as IA U/O 32 Rule 4 of CPC are hereby allowed on cost of Rs.800/-.

The order of abatement of suit of deceased plaintiff No.2 is set aside delay is condoned and the applicants are permitted to come on record as plaintiff No.2(a) and (b).

Plaintiff No.2(a) is also permitted to represent her minor daughter plaintiff No.2(b) as a natural guardian.

The counsel for the plaintiffs is hereby directed to carry out the necessary amendment and to furnish amended plaint on next date of hearing without fail. Hence, call on 24.07.2024.

(Dictated to the Stenographer directly on computer, typed by her, revised, corrected and then pronounced by me in the open Court on this the 28<sup>th</sup> day of June, 2024)

**(Zaibunnisa)**  
**Pri. Senior Civil Judge & JMFC**  
**Hunsur**

