

**IN THE COURT OF I ADDL. SENIOR CIVIL JUDGE
AND JMFC., AT HUNSUR,**

**Presided Over by Smt. Bhagyamma
B.com. L.L.B.,**

Dated, this the 18th day of August 2026

OS.No.287/2024

Plaintiff : Mukthabai

.Vs.

Defendant : B.Sundar

IA No.2

Applicant : Shanthabai
W/o Late Lakshmana Rao Kalinge
Aged about 68 years
R/at Gavadagere Village and
Hobli, Hunsur Taluk,
Mysuru District.

.Vs.

Opponent : B.Sundar

-- Defendant

ORDER ON IA.NO.II

At the stage plaintiff evidence and the plaintiff reported as dead, the learned counsel for applicant/proposed plaintiff has filed this I.A to implead her as party in the suit by allowing this application in the interest of justice.

2. In the sworn affidavit annexed to I.A, the applicant stated on oath that the during lifetime of original plaintiff had executed registered Will in respect of suit schedule property on 02.07.2022, and subsequently he died on 06.04.2026. Hence she has no LR's except her, because Manmatha Rao Kalinge and Muktha Bai had no issues. Based on the Will she is the only legal heir of the original plaintiff. If the application is allowed there will be no prejudice to the plaintiff or defendant. Per contra if it is not allowed she will be put to great loss and hardship.

3. Per contra, the learned counsel for defendant has filed objection stating that the application is not at all maintainable either in law or on facts. It is contended that, a person who is not a legal heir of a deceased party can come on record upon the death of such person as a legal heir. If at all the applicant has got any right in the suit property, she has to file separate suit seeking necessary reliefs. Upon the death of plaintiff on 06.04.2026, the suit become infructuous. Accordingly, prayed to dismiss the I.A.

4. Heard and perused the materials available on record.

5. The points that would arise for my consideration is:

Whether the applicant/proposed plaintiff has made out grounds to implead her as party in this suit as prayed?

6. My answer to the above point is in the **Affirmative** for the following:

REASONS

7. The plaintiff has filed this suit seeking relief of possession of the plaint schedule property whereas the defendant contested the suit of plaintiff by taking specific defence that, husband of the plaintiff Manmatha Rao Kalinge and his brother LakshmanaRao Kalinge have jointly sold a vacant site bearing Katha No.400 measuring 75x81 feet in favour of defendant through registered sale deed dated 01.01.1983.

8. Admittedly, the plaintiff has filed the present suit seeking possession of the plaint schedule property. The defendant has seriously contested the claim of the plaintiff and has taken a specific defence that the husband of the plaintiff, namely Manmatha Rao Kalinge, and his brother Lakshmana Rao Kalinge had jointly sold the vacant site bearing Katha No.400, measuring 75 feet × 81 feet, in favour of the defendant under a registered sale deed dated 01.01.1983. The defendant has also relied upon subsequent transactions and documents in support of his claim over the property. Thus, the title and possession over the suit schedule property are seriously in dispute.

9. During the pendency of the suit, the original plaintiff died on 06.04.2026. The present applicant seeks to come on record claiming to be the beneficiary under a registered Will dated 02.07.2022 allegedly executed by the deceased plaintiff. It is true that the expression "legal representative" under Section 2(11) of the Code of Civil Procedure is wider than the expression "legal heir" and, in an appropriate case, a person claiming under a Will may represent the estate of the deceased. However, when the status of such person as a legal representative is disputed, the Court is required to determine the said question in accordance with Order XXII Rule 5 of CPC. The question whether the applicant is entitled to represent the estate cannot be decided merely on the basis of her assertion in the affidavit.

10. In the present case, the applicant has not produced sufficient material before this Court to establish that she is entitled to represent the estate of the deceased plaintiff. The applicant principally relies upon the alleged registered Will dated 02.07.2022. The defendant has disputed the maintainability of the application and the entitlement of the applicant to come on record. More importantly, the claim of applicant under the alleged Will is directly connected with the title and interest in the suit schedule property, which itself is seriously disputed by the defendant. The defendant relies upon a registered sale deed dated 01.01.1983 executed by Manmatha Rao Kalinge

and Lakshmana Rao Kalinge in his favour and contends that the property was subsequently dealt with by him and that he has been in possession thereof. Therefore, permitting the applicant to substitute herself as plaintiff solely on the basis of the alleged Will, without determining her entitlement to represent the estate, would have the effect of permitting a disputed claimant to prosecute the suit in the place of the deceased plaintiff.

11. The present application is also filed under **Or I Rule 10(2) R/w Sec.151 of CPC**. The applicant has not sought determination of her status as legal representative under Order XXII Rule 5 CPC. Though the terminology of provision is not by itself crucial, the applicant is required to establish that she is a person who can lawfully represent the estate of the deceased plaintiff before she can be substituted in the place of the deceased plaintiff.

12. It is also pertinent that the applicant is not claiming to be the natural heir of the deceased plaintiff. Her entire claim to represent the estate is founded upon the alleged Will dated 02.07.2022. Therefore, the applicant's entitlement is dependent upon the legal effect and genuineness of the said Will. The question whether the applicant has acquired any right under the Will and whether she is entitled to represent the estate cannot be presumed merely because the document is stated to be registered. But the applicant has also not placed sufficient material before this Court to establish that there are no

other persons having a claim to represent the estate of deceased plaintiff. The mere assertion in the affidavit that the concerned persons had no issues is not, by itself, sufficient to conclusively determine the question of representation of the estate.

13. The suit is admittedly at the stage of plaintiff's evidence. The death of the original plaintiff has occurred during the pendency of the proceedings. In such circumstances, the applicant seeking to substitute herself in place of the deceased plaintiff must establish her entitlement to represent the estate in accordance with the procedure contemplated under Order XXII of CPC.

14. It is not appropriate in the present application to adjudicate upon the validity of the Will or the title of the applicant to the suit schedule property. However, in the absence of sufficient material to establish the applicant's entitlement to represent the estate of deceased plaintiff, the relief sought in the present application cannot be granted.

15. The contention of defendant that the applicant may establish her independent right, if any, carries some force, particularly when the applicant's claim is founded exclusively upon the alleged Will and the title to the suit schedule property is seriously disputed. At the same time, this Court makes it clear that no finding is recorded in this order regarding the ultimate validity or invalidity of the Will dated 02.07.2022 or the title of either

party over the suit schedule property. Such questions are left open to be decided in appropriate proceedings in accordance with law. In view of the above circumstances, this Court is of the opinion that the applicant has failed to make out sufficient grounds for the relief sought in the present application. Hence, the point for consideration is answered **in the Negative**.

O R D E R

I.A II filed by the applicant under Order I Rule 10(2) R/w Sec.151 of CPC is hereby dismissed.

The applicant is not permitted to come on record in the present suit in place of the deceased plaintiff on the basis of the alleged registered Will dated 02.07.2022.

It is made clear that this order shall not be construed as an adjudication upon the validity, genuineness or due execution of the alleged Will dated 02.07.2022, or upon the title or possession of the parties over the suit schedule property.

Upon the death of plaintiff on 06.04.2026, the suit become infructuous and dismissed.

(Smt.Bhagyamma)
**I Addl. Civil Judge & JMFC.,
Hunsur.**