

O.S. 357/2021

ORDER ON I.A. NO.8 TO 10

Application filed U/o 22 R-3 R/w Sec. 151 of C.P.C, U/o
22 R-9 R/w Sec. 151 of C.P.C. and U/s 5 of Limitation Act.

2. All these 3 applications were filed by the applicants seeking permission for this court to come on record as the legal heirs of deceased plaintiff M.Kalegowda. Further, the applicants are also seeking setting aside ex-parte order passed against the LR's of deceased M.Kalegowda by condoning the delay by filing the applications.

3. In all these applications one applicant by name Leelavathi who is the proposed plaintiff No.1(c) filed her 3 different affidavits in support of their applications and she has stated on oath that, the deceased plaintiff is her father and applicant No.1(a) is her mother and 1(b) is her sister. Further she has stated on oath that, her father M.Kalegowda has filed the suit against the defendants for the relief of declaration and perpetual injunction in respect of the suit schedule property.

4. The defendants upon service of summons they appeared before this court and filed their written statement. However, her father M.Kalegowda who is the original plaintiff herein has been demised on 06.01.2022 leaving behind herself and remaining applicants who are the mother and sister of the applicants as his only legal heirs of the deceased M.Kalegowda. However, since her mother who is the plaintiff No.1(a) is suffering from age old ailments and health hazardous, she could not contact her counsel intime to file necessary applications to represent the deceased original plaintiff Kalegowda and hence this court has passed an order

placing the deceased LR's of the plaintiff as abated on 07.04.2022. The said delay in not approaching the court by instituting application is not intentional and it is because of the old age of one Deveeramma who is the wife of deceased M.Kalegowda. Accordingly, the applicants are seeking to come on record as LR's of deceased M.Kalegowda original plaintiff herein, by setting aside the order of abatement and also by condoning the delay in filing these applications.

5. The defendants opposed the said applications by way of their common objections and they have stated in their objections that, the applications not filed U/s 22 R-3 of C.P.C and there is a specific provision under C.P.C. to bring the LR's of the plaintiff on record. The question of invoking Sec. 151 to that effect is not maintainable. The applications do not disclose the proper reasons to allow the applications and the alleged reasons are not supported by any documents. Hence, prays for dismissal of the applications.

6. Heard the counsel appearing for the applicants and also the learned counsel appearing for the defendants in support of the applications and objections.

7. The following points arise for this court's consideration.

1) Whether applicants have made out sufficient grounds for allowing the present application?

2) What Order?

8. This court findings on the above points for consideration are as under:

Point No.1: In the Affirmative

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

REASONS

9. POINT NO.1:

On verifying the documents and pleadings of the applications and objections, originally the suit has been instilled and launched by one M.Kalegowda who is the alleged father and the husband of the applicant No.1(a). According to the applicants after the demise of M.Kalegowda they are the only legal heirs to succeed the estate of the deceased M.Kalegowda and wife of M.Kalegowda by name Deveeramamma, she could not approach and contact her counsel in filing the applications due to her old age and it is not intentional one in delaying the applications. Hence, this court has already passed an order of abatement against LR's of deceased Kalegowda. Now the instant applications have been moved. According to the defendants, the applications are not supported with any documents. However, on verifying the age of one Deveeramamma her age is specifically indicated and disclosed as 72 years.

10. Further, where a suit abates or dismissed, no fresh suit shall be brought on the same cause of action. The applicants claiming to be legal representatives of the deceased M.Kalegowda may be permitted to apply for setting aside the abatement order.

11. Further if it is proved that, they were prevented by any sufficient cause from continue the suit, the court shall set aside the abatement of dismissal upon such term by imposing cost or otherwise as it is things fit. Further, nothing in this rule shall be construed as barring in the later suit, as defence based on the facts which constituted the cause of action in the suit which are abated or had been dismissed under the provision. Further, where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone or the sole plaintiff alone dies and the right to sue survives, the court on an application made in that behalf shall cause the legal representatives of the deceased plaintiff to be made as party and shall proceed with the suit. Admittedly, in the objection raised by the defendants they have not disputed their relationship of the applications with the deceased M.Kalegowda and it is their only contention is the application is belated not supported with any documents and the provision is incorrect.

12. However, the order 22 R-3 of C.P.C. is clearly establishes and contemplates the procedure to be followed in the case of death of one and several plaintiffs are the sole plaintiff. Here in the instant suit one Kalegowda being the sole plaintiff after his demise as per the provision alone. The applicants may be permitted to represent the suit on behalf of the deceased Kalegowda on the applications made in that regard. Further as per the provisions the court shall permit the legal representatives of the deceased plaintiff to proceed with the suit.

13. Hence in the opinion of this court, the applications filed by the applicants are to be dealt liberally but not stringently and they shall be permitted to represent deceased M.Kalegowda. However, in respect of delay in filing the applications in approaching the court are concern, the applicants may be imposed with cost causing delay in approaching the court. Hence, the applications are liable to be allowed by imposing cost. Hence, this court without further discussion proceeds to answer point No.1 in the **affirmative**.

14. POINT NO.2:

In view of the above discussion and reasons mentioned therein this court proceeds to pass the following:

ORDER

The I.A.No. 8 to 10 filed by applicants U/o 22 R-3 R/w Sec. 151 of C.P.C., U/o 22 R-9 R/w Sec. 151 of C.P.C. and U/s 5 of Limitation Act are hereby allowed on cost of Rs.500/-.

Accordingly, the applicants are permitted to come on record as the LR's of deceased M.Kalegowda to proceed with the suit on his behalf and the abatement order passed against the LR's of deceased M.Kalegowda is hereby set aside by condoning the delay days in approaching the court.

For amendment of plaint.

Call on: 15.10.2024

(Chandan S)
Prl. Civil Judge & JMFC.,
K.R.Nagar.