

ORDER ON I.A.XXIV

The said application is filed by the plaintiff No.2 under Order 9 Rule 4 of C.P.C. seeking to restore the suit against defendant No.3(a) and defendant No.9 by setting aside the dismissal order dated 13.11.2024.

2. In the memorandum of facts, it is submitted that due to ill-health of an advocate who is representing the applicant was unable to attend before the court resulting that the suit against defendants No.3(a) and 9 was dismissed. The reason given for absence was bonafide one. Therefore, prays to set aside the dismissal order.

3. I have gone through the order sheet. The plaintiff has not taken any steps to issue summons to the legal heirs of defendant No.3(a) and defendant No.9 in spite of sufficient time given to them. The reason given in memorandum of facts on 20.11.2024 may be believable to be true. However, the previous order sheet definitely shows that the plaintiffs have not shown their interest to take steps to issue summons to the defendants No.3(a) and 9. The order sheet of this suit is best example to explain this mistake committed by the plaintiffs. The plaintiffs' counsel has taken more than sufficient time to take steps to issue summons against the defendants No.3(a) and 9, because of

non-payment of process fee this court not ordered to issue summons to defendants No.3(a) and 9. Now the Advocate who filed application explained in the memo that due to one of the reason of the ill-health of the Advocate, could not appear before the court. This is the reason for one day i.e., on 13.11.2024. The said reason may be accepted to be true for that day only. However, the counsel for the plaintiffs has not given any reason for his failure to take steps on earlier occasion to issue summons to be issued for appearance of defendants No.3(a) and 9. This type of indifferent attitude is one of the grounds to delay the suit. However, if application is not allowed it will cause injustice to the plaintiffs and such injustice cannot be counted in terms of compensation of money. Hence, by imposing costs the said application is allowed. Therefore, the following:

ORDER

I.A.XXIV filed by the plaintiff No.2 under Order 9 Rule 4 of C.P.C. is allowed with cost of Rs.3,000/- payable to the Taluk Legal Service Authority. Office is directed to restore the suit against the defendants No.3(a) and 9 only after confirmation of payment of cost. Call on 10.02.2025.

Senior C.J. & JMFC.,
Nanjangud.

03.02.2025