

Orders on I.A.No.III to V

The applicants/LRs of deceased plaintiff No.5 have filed I.A.No.III u/Order XXII Rule 3, I.A.No.IV u/Order XXII Rule 9 and I.A.No.V u/Section 5 of Limitation Act, seeking permission to come on record as legal representatives of deceased plaintiff No.5.

2. Despite sufficient opportunities, the defendants have failed to file objections to I.A.No.III to V.

3. Heard and perused.

4.The plaintiffs have filed this suit against the defendants for the relief of bare injunction restraining them from interfering with their possession and enjoyment over the suit schedule property. Plaintiff No.5 died on 11.01.2021. Plaintiff No.5(a) is his wife, plaintiff No.5(b) to 5(d) are children of deceased plaintiff No.5.

5.The Hon'ble High Court of Karnataka in **Chennaiah @ Doddachennaiah Vs. Bylappa, Since dead by his LRs.** in **RSA No.743/2011 (INJ.)** dated: 11.04.2022 held that, *'In a suit for injunction in relation to an immovable property, obviously, the legal representative of the deceased would enjoy the relief that the original party (plaintiff or defendant) would have been entitled to by virtue of the succession or inheritance in their favour and thus the suit would not abate and would have to be continued by bringing the legal representatives of the deceased on record'*.

6.In view of the above ratio laid down by Hon'ble High Court of Karnataka, there is no impediment to bring the LRs of deceased plaintiff No.5 on record. Right to sue survives. Hence, there is no impediment

to allow the applications and cause the legal representatives of the deceased plaintiff No.5 to be made as parties and proceed with the suit. Accordingly, I proceed to pass the following:

ORDER

IA No.3 to 5 filed under Order 22 Rule 3, 22 Rule 9 of CPC and under Sec. 5 of Limitation Act are hereby allowed.

Accordingly, delay is condoned, set-aside the abatement order and the applicants are permitted to come on record as plaintiff No.5(a) to 5(d) and proceed with the suit.

For Amendment and for amended
plaint by: 08.12.2023

***I Addl. Civil Judge & JMFC.,
Nanjangudu***

L/c for defendant No.1, 3 and 5 submits no objections to IA No. 2 and 3.

Heard and perused.

Suit is for declaration and for partition and separate possession. Plaintiff No.1 died on 30.01.2022. Plaintiff No.1(a) to (c) are daughters of deceased plaintiff No.1. Right to sue survives. Apart from that learned counsel for defendant No.1, 3 and 5 submitted that no objections to IA No.2 and 3.

Hence, there is no impediment to allow the applications and cause the legal representatives of the deceased plaintiff No.1 to be made as parties and proceed with the suit. Accordingly, I proceed to pass the following:

ORDER

IA No.2 and 3 filed under Order 22 Rule 3 and 22 Rule 9 of CPC are hereby allowed.

Accordingly, set-aside the abatement order and the applicants are permitted to come on record as

plaintiff No.1(a) to 1(c) and proceed
with the suit.

For Amendment and for amended
plaint by: 13.12.2022

***I Addl. Civil Judge & JMFC.,
Nanjangudu***

Heard and perused.

Suit is for Permanent injunction. Plaintiff No.2 died on 29.09.2022. Plaintiff No.2(a) is wife & plaintiff No.2(b) is son of deceased plaintiff No.2. Right to sue survives. Apart from that learned counsel for defendants submitted that no objections to IA No.5.

Hence, there is no impediment to allow the application and cause the legal representatives of the deceased plaintiff No.2 to be made as parties and proceed with the suit. Accordingly, I proceed to pass the following:

ORDER

IA No.5 filed under Order 22 Rule 3, 22 Rule 9 of CPC and under Sec. 5 of Limitation Act is hereby allowed.

Accordingly, set-aside the abatement order and the applicants are permitted to come on record as plaintiff No.2(a) and 2(b) and proceed with the suit.

For Amendment and for amended plaint by: 06.11.2023

I ACJ & JMFC., Nanjangudu

L/c for defendant No.6 submits IA No.12 to 14 may be allowed on exemplary cost as there is delay of 2 years 3 months and 26 days.

Heard and perused.

Suit is for declaration and for possession. Plaintiff No.3 died on

26.09.2020. Plaintiff No.3(a) is wife and plaintiff No.3(b) and 3(c) are children of deceased plaintiff No.3. Right to sue survives. Apart from that learned counsel for defendant No.6 submitted that applications may be allowed on cost.

Of course there is delay of 2 years 3 months and 26 days. It is well settled that delay can be compensated by imposing cost. Hence, there is no impediment to allow the applications and cause the legal representatives of the deceased plaintiff No.3 to be made as parties and proceed with the suit. Accordingly, I proceed to pass the following:

ORDER

IA No.12 to 14 filed under Order 22 Rule 3, 22 Rule 9 of CPC and under Sec. 5 of Limitation Act are hereby allowed on cost of Rs. 500/- each.

Accordingly, delay is condoned, set-aside the abatement order and the applicants are permitted to come on record as plaintiff No.3(a) to 3(c) and proceed with the suit.

For Amendment and for amended
plaint by: 24.05.2023

I ACJ & JMFC., Nanjangudu

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Suit is for recovery of money. Sole plaintiff died on 22.08.2019. In appeal in R.A. No. 4/2008 the LR's of deceased plaintiff were brought on record. L/c for defendant has submitted no objections to IA No.3 to 5. Plaintiff No.1(a) is wife and plaintiff No.1(b) and 1(c) are children of deceased plaintiff. Right to sue survives.

Hence, there is no impediment to allow the applications and cause the legal representatives of the deceased plaintiff to be made as parties and proceed with the suit. Accordingly, I proceed to pass the following:

ORDER

IA No.3 to 5 filed under Order 22 Rule 3, 22 Rule 9 of CPC and under Sec. 5 of Limitation Act are hereby allowed.

Accordingly, delay is condoned, set-aside the abatement order and the applicants are permitted to come on record as plaintiff No.1(a) to 1(c) and proceed with the suit.

For Amendment and for amended plaint by: 17.07.2023

I ACJ & JMFC., Nanjangudu

L/c for plaintiff files memo stating that defendant no.1 died on 03.2.2022.

L/c for plaintiff files I.A. no.1 under Order 22 Rule 4, I.A. No.2 U/o 22 Rule 9 of CPC and I.A. No.3 U/Section 5 of Limitation Act.

Issue I.A.No.1 to 3 notice to defendant no.1(a) if PF and copies of furnished.

R/by: 21.07.2022

I Addl. Civil Judge & JMFC,
Nanjangudu

Sri. K.S.M. advocate files Vakalath for applicants/ LR's of deceased plaintiff along with IA's under Order 22 Rule 3, 22 Rule 9 of CPC and under Sec. 5 of Limitation Act seeking permission to cause the legal representatives of the deceased plaintiff to be made as parties and shall proceed with the suit.

L/c for defendant no.1(b) submits that application may be allowed on cost.

Copies of IA's are not served on D2.

For objections of D2, if any to the LR's application by:18.07.2022

I Addl. Civil Judge & JMFC,
Nanjangudu

L/c for applicant filed I.A. No.7 U/o 22 Rule 3 of CPC seeking permission to bring the LR's of deceased plaintiff on record and I.A. No.8 U/Section 5 of Limitation Act and I.A. No. 9 U/Order 22 Rule 9 of CPC for:

- i) an application to bring on record, the LR's of the deceased Plaintiff No. 1(a) in the suit.
- ii) an application to condone the delay in filing the application to set-aside the abatement; and
- iii) an application to set-aside the abatement order.

For objections to I.A. No. 7 to 9 if any by: 29.11.2018.

Addl. Civil Judge & JMFC,
Nanjangudu