

Dated 30.8.2017

COMMON ORDER ON I.A.No.III to V

The I.A.No.III is filed by the plaintiff U/o XXII Rule 4 of CPC with a prayer to bring the LR's of defendant No.1 on record, I.A.No.IV is filed by the plaintiff U/sec.5 of Limitation Act to condone the delay of 38 days for bringing the LR's of the defendant No.1 on record, I.A.No.V is filed by the plaintiff U/o XXII rule 9 of CPC with a prayer to set aside the abatement order if any passed in bringing the LR's of the defendant No.1.

In support of the application the plaintiff No.1 has sworn to the affidavit contending that, he along with other plaintiffs have filed the suit for declaration and permanent injunction in respect of the suit schedule property and the defendant No.1 is reported to be dead on 17.04.2016 leaving behind the proposed LR's who's name are accompanied in the application and contended that, he was bed ridden has he was suffering from Jaundice disease and thereby 38 days was lapsed for bringing the LR's on record and that their presence is very much necessary to decide the case as the cause of action survives against them

and thereby prayed to allow the instant applications as sought for.

On the other hand the LR's of the defendant No.1(a) to 1(c) filed their objection contending that, the application is not maintainable either in law or on facts of the case and that the plaintiff is well aware of the death of the defendant No.1 and that contended that, no proper reasons are assigned by the plaintiff in bringing the LR's of the defendant No.1 on record and that the plaintiff has sworn to a false affidavit and thereby prayed to dismissal of the application.

Heard from both side and perused the materials available on record.

The points that arise for my consideration are:

1. Whether the plaintiffs have made out ground to allow the I.A.No.III to V as sought for?

2. What order?

My findings to the above points are hereunder:

Point No.1: **"Affirmative"**

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

REASONS

Point No.1: The present suit is filed by the plaintiffs seeking declaration to declare them as absolute owners of the schedule property by virtue of the oral partition deed dated 6.05.1965. On the other hand the defendant No.1 has filed his written statement denying the plaintiffs claim and thereby prayed to dismiss the suit. On the basis of the pleading the issues were framed and accordingly when the matter was set down for enquiry on the preliminary issues the instant application is filed by the plaintiff contended that, the defendant No.1 is reported to be dead on 17.04.2016 and that the LR's are necessary to be brought on record, as the cause of action is survives against them. On the other hand the LR's of the defendant filed their objection contending that the plaintiff was well aware of the fact and thereby prayed to dismiss the application. It is pertinent to note that, the death of the defendant No.1 as on 17.04.2016 is not in dispute. Likewise the proposed defendants are the LR's of the defendant No.1 is also not in dispute, only fact is delay. Admittedly, the defendant No.1 is reported to be dead on 17.04.2016 and accordingly, the application is filed on 25.08.2016. Admittedly, there is a delay of 38 days for bringing the LR's of the

defendant No.1 on record. It is sworn by the plaintiff No.1 that, he was suffering from Jaundice disease and he could not get details of the deceased LR's. Admittedly, there are other plaintiffs who could have moved application well in time, but here the suit is been one for declaration, certainly the cause of action does arise against the LR's . No doubt the other plaintiffs have not filed the proper application at relevant point of time, but the reasons assigned by the plaintiff No.1 appears to be a bonafide one. Mere on the ground that the application is not filed in the proper time should not give room to the multiplicity of proceedings. Admittedly, the cause of action of the defendant No.1 does survive against his LR's. Admittedly, they will be having an opportunity to contest the case. Therefore, to avoid multiplicity of proceedings, I come to a conclusion that, the proposed LR's required to be brought on record as proper and necessary party. Hence, I answer point No.1 in the "Affirmative"

8. Point No.2 In view of the above discussion, I proceed to pass the following:

ORDER

The I.A.No.III is filed by the plaintiff U/o XXII Rule 4 of CPC, I.A.No.IV is filed by the plaintiff U/sec.5 of Limitation Act,

I.A.No.V is filed by the plaintiff U/o XXII rule
9 of CPC are hereby allowed.

(JAI SHANKAR.J)
Civil Judge and JMFC
Periyapatna