

ORDERS ON I.A.NO.V, IX & X.

These I.A.No.V, IX and X filed by the applicants under Order XXII, Rule 4 of C.P.C., under Order XXII, Rule 9 of C.P.C. and under Section 5 of Limitation Act., seeking to bring the legal representatives of deceased defendant No.1 on record by set aside the order of abatement against deceased defendant No.1 and also condone the delay in bringing legal representatives of deceased defendant No.1 on record.

2. In these I.A.No.V, IX and X, it is stated that, the defendant No.1 was died on 21.07.2020 leaving behind the legal representatives as stated in the I.A.No.V. The bringing of her to the suit is necessary for proper adjudication of the case and otherwise the great hardship will be caused to her. Further stated that, there is a delay in bringing his legal heirs to the suit. Therefore, the order of abatement needs to be set aside in the interest of the applicant. Further stated that, during the pendency of the above suit the defendant No.1 was died leaving behind his legal heirs. She is also necessary party to the above suit. Accordingly, the applicant has prayed to allow the I.A.No.V, IX and X.

3. On the other hand, learned counsel for the Lrs of defendant No.1 submitted that, the above applications may be allowed on cost.

4. Heard on both sides and perused the materials available on record.

5. Now the only point that will arise for my consideration are:-

1. Whether the applicant has made out sufficient grounds to allow I.A.No.V, IX and X?

2. What Order?

6. My answers to the above points are:-

Point No.1 : In the **Affirmative**.

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

:: R E A S O N S ::

7. **Point No.1:-** The instant suit is for the relief of partition and separate possession. As found from above applications, the defendant No.1 was died on 21.07.2020 i.e., during the pendency of the suit.

8. As per Article 120 of the Limitation Act 1963, the legal representatives of a deceased defendant No.1 should be brought on record within a period of 90 days from the date of death of the defendant No.1. After expiry of that period, the suit shall abate so far as the deceased defendant is concerned if no application is made under Rule 4 of Order 22 within that period of 90 days.

9. In this case, admittedly the defendant No.1 died on 21.07.2020. The period of 90 days would expire as on 21.10.2020. The instant applications are filed on 05.11.2020. Thus, the suit is abated against the deceased defendant No.1.

10. As per Rule 9 of Order 22, the defendant No.1 or legal representatives of deceased defendant No.1 may apply for an order to set aside the abatement. The Court can set aside the order of abatement upon such terms as to costs if it is proved that they were prevented by any sufficient costs from continuing the suit. The provisions of Section 5 of the Limitation Act shall apply to the applications filed under Rule 22(2).

11. Section 5 of the Limitation Act gives power to the Court to admit any application other than application under any of the provisions of Order 21 of C.P.C. even after the prescribed period if the applicants satisfies the Court that he had sufficient cause for not making the application within such period.

12. Since the suit is for the relief of partition and separate possession, it is necessary to adjudicate the rights of each and every party who has interest over the suit property. Though the applicants have not completely mentioned the grounds for their failure in filing the applications within a period of limitation, it is very much necessary to bring legal representatives of deceased defendant No.1 on record for proper adjudication of the case and to avoid the multiplicity of the proceedings and also in the ends of justice and equity by imposing costs.

13. The list of the legal representatives of defendant No.1 shown in the above applications are not disputed at this stage by other side. More so, there is a delay of not more than 03 months. Hence, the Court is of opinion that, if the delay is condoned in filing an application seeking to set aside the abatement against the deceased defendant No.1 in enabling the applicant to bring the L.Rs. of deceased defendant No.1 on record, no hardship will be caused to other parties. Hence, the applicant has clearly made out sufficient grounds to allow above I.As. Accordingly, Point No.1 is answered in the '**Affirmative**'.

14. **Point No.2:-** In the light of the above discussion, I proceed to pass the following:-

:: O R D E R ::

I.A.No.V filed under Order XXII,
Rule 4 of C.P.C., I.A.No.IX filed under
Order XXII, Rule 9 of C.P.C. and

I.A.No.X filed under Section 5 of Limitation Act., are hereby **allowed** on costs of Rs.100/- each.

Further, whatever the delay in filing of these I.As., is hereby condoned as prayed in the I.A.No.X.

The proposed L.Rs. of the deceased defendant No.1 is hereby brought on record as defendant No.1(a) as mentioned in I.A.No.V.

The plaintiff is hereby directed to carry out the amendment in the plaint and also directed to file the amended plaint.

For amendment and to file amended plaint.

Call on: 17.12.2022

**Addl. Civil Judge & J.M.F.C.,
T.Narasipura.**