

COMMON ORDERS I.A.NO.III TO V

The plaintiff has filed IA.No.III under Order XXII Rule 4 R/W Section 151 of C.P.C seeking to bring the legal representatives of deceased defendant No.2 on record. I.A.No.IV under Order XXII Rule 9 R/W Section 151 of C.P.C to set-aside the abatement order passed against the deceased defendant No.2 and I.A.No.V under Section 5 of Limitation Act to condone the delay of 151 days in filling the I.A.No.III and IV.

In the similar affidavits accompanying the said applications sworn in by the plaintiff, it is submitted that, he has filed suit against the defendants for the relief of partition and separate possession, wherein the defendant No.2 died on 14.05.2021. As such, legal representatives of deceased defendant No.2 have to be brought on record as they are necessary parties to case. As there was personal inconvenience and family problems he could not file the applications in time, as such an application for condonation of delay for abatement order if any against the defendant No.2 is filed. Hence, prayed to allow the

applications.

Despite issuance of notice and appearance of legal representatives of deceased defendant No.2 they have failed to file objection to IA.No.III to V, as such the same was taken as not filed on 16.06.2022.

Heard the counsel for plaintiff on IA.No.III to V.

I have perused the records of the case on hand carefully and meticulously.

Undisputedly, the proposed defendants are the legal representatives of deceased defendant No.2. Since the suit filed by the plaintiff is for the relief of partition and separate possession wherein the right to sue survives to the legal representatives of deceased defendant No.2. As such, it is necessary to brought the legal representatives of deceased defendant No.2 on record who are also necessary parties to the case on hand and in their absence the suit cannot be adjudicated effectively. Moreover, despite granting sufficient opportunities the legal representatives of deceased defendant No.2

have not filed objection to I.A.No.III to V, resulting an adverse inference. Hence, in my considered view, I am of the opinion that, the I.A.No.III to V requires to be allowed. Accordingly, I proceed to pass the following;

ORDER

The I.A.No.III under Order XXII Rule 4 R/W Section 151 of C.P.C, I.A.No.IV under Order XXII Rule 9 R/W Section 151 of C.P.C and I.A.No.V under Section 5 of Limitation Act filed by the plaintiff are hereby allowed.

**Civil Judge & JMFC.,
T. Narasipura.**

The plaintiff is hereby directed to carry out necessary amendment and to file amended plaint by : 28.07.2022.

**Civil Judge & JMFC.,
T. Narasipura.**

OS No.223/2004

Call on for amendment and amended plaint
by 04.06.2022.

**Civil Judge & JMFC.,
T. Narasipura.**

ORDERS ON IA No.II

Perused the plaint averments, documents, IA No.II, the affidavit filed by the 1st plaintiff in support of IA No.II.

I.A.No.II is filed by the 1st plaintiff under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure seeking an order to restrain the defendants No.4 to 10 or any person acting under them from alienating the application schedule property till pending disposal of the suit.

This suit is filed by the plaintiffs against the defendants for the relief of Partition and Separate Possession of their share. On perusal of the pleadings and documents produced by the plaintiff, it appears that at this stage the reasons assigned in the affidavit are satisfactory. Hence, at this stage, the delay in issuance of notice will defeat the purpose of the order of Temporary Injunction. Therefore, this Court proceeds to pass the following :

ORDERS

Issue exparte ad-interim temporary

injunction restraining defendants No.4 to 10, or any person acting under them from alienating the application schedule property.

The above order shall be in force till filing objections.

The plaintiffs shall comply the Order 39 Rule 3(a) and (b) of CPC.

The office is hereby directed not to issue certified copy of this order until the requisite P.F. is paid.

Issue Emergent Notice on IA II and suit summons to defendants No.1 to 10 through RPAD r/by:

**Civil Judge & JMFC.,
T. Narasipura.**