

ORDERS ON I.A.NO.IV

At stage of Further evidence of plaintiff this I.A.No.IV filed by the applicant/plaintiff under Order XXII, Rule 4 R/w Section 151 of C.P.C, seeking to bring the opponents as defendant No.5 & 6 on record.

2. In this I.A.No.IV it is stated that, the plaintiff has filed a suit against the defendants for the relief of declaration and permanent injunction. During the pendency of the suit the defendant No.1 was died on 04.12.2023. Further, the deceased defendant No.1 has leaving behind his three sons and opponents, who are his wife and daughter. Hence, the bringing of Lrs of the deceased defendant No.1 to the proceedings is necessary for proper adjudication of the case and otherwise the great hardship will be caused to the plaintiff. Accordingly, the applicant have prayed to allow the I.A.No.IV.

3. On the other hand, the learned counsel for the Lrs of the defendant No.1 has submitted that, I.A.No.IV may be allowed.

4. Heard the arguments of the both side and perused the materials available on record.

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

1. Whether the applicant/plaintiff has made out sufficient grounds to allow I.A.No.IV ?

2. What Order ?

6. My answers to the above points are:-

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

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

:: R E A S O N S ::

7. **Point No.1:-** The instant suit is for declaration and permanent injunction. As found from above application, the defendant No.1 was died on 04.12.2023 i.e., during the pendency of the suit.

8. As per Article 120 of the Limitation Act 1963, the legal representatives of a deceased d 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 No.1 is concerned if no application is made under Rule 4 of Order 22 within that period of 90 days.

9. In this case, the instant application is filed within the stipulated period. Since the suit is for the relief of declaration and permanent injunction, it is necessary to adjudicate the rights of each and every party who has interest over the suit property.

10. The list of the legal representatives of the deceased defendant No.1 shown in the above application is not disputed at this stage by other side. More so, there is no delay

in filing the above application and no hardship will be caused to other parties. Hence, the Court is of opinion that, the applicant/plaintiff has clearly made out sufficient grounds to allow above I.A. Accordingly, Point No.1 is answered in the '**Affirmative**'.

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

:: O R D E R ::

I.A.No.IV filed under Order XXII, Rule 4 R/w Section 151 of C.P.C is hereby **allowed**.

The L.Rs. of the deceased defendant No.1 are hereby brought on record as defendant No.5 & 6 respectively as mentioned in I.A.No.IV.

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:

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