

IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C.,
DEVADURGA

Present:
Sri.Hanumanth Satwik.,LL.M,

Senior Civil Judge & JMFC, Devadurga.

FDP.No.1/2021

DATED : THIS THE 5th DAY OF JUNE 2024.

Petitioner : 1. Smt.Venkubai W/o. Late Vasappa,
Age: 83 years, Occ: Household,
R/o.Drabar Oni Devadurga, now at
H.No.1-1-55/138/45, Venkateshwara Nagar,
Raichur.

(By Sri.V.M.M Advocate)

--V/s--

Respondent : 1. Smt.Sarojamma W/o. Baburao,
Age: 50 years, Occ: Household,
R/o.Drabar Oni Devadurga, now at
H.No.1-1-55/138/45, Venkateshwara Nagar,
Raichur.

2. Smt.Eramma W/o. Eshwarappa,
Age: 52 years, Occ: Household & Agri.,
3. Vasappa S/o. Late Eshwarappa,
Age: 30 years, Occ: Govt. Servant,
4. Ranganath S/o. Late Eshwarappa,
Age: 27 years, Occ: Pvt.Work,
5. Smt.Deepa W/o. Not known,
Age: 24 years, Occ: Household,

all are R/o.Drabar Oni Devadurga,
Tq:Devadurga, Dist: Raichur.

6. Smt.Jyoti W/o. Veeresha, Age: 22 years,
Occ: Household, R/o. Nir Manvi,
Tq: Manvi, Dist:Raichur.

(R.1 by Sri.M.M., Advocate)
(R.2 & 4 to 6 by Sri.B.S., Advocate)

ORDER ON IA NO.III to V

For the sake of convenience and to avoid repetition of facts all the three applications are taken together for common discussion.

2. This is a final decree proceedings.

3. The present applications have been filed by the LR's of deceased respondent no.1 U/o.XXII Rule 4, U/o.XXII Rule 9 of CPC and U/sec.5 of Limitation Act. The LR's of deceased respondent no.1 in their application filed U/o XXII Rule 4 of CPC pray to bring them on record. They in the application filed U/o.XXII Rule 9 of CPC pray to set aside the order of abatement. Further, in the application filed U/Sec.5 of Limitation Act, the LR's of deceased respondent no.1 pray to condone the delay in filing the applications for them to come on record as the LR's of deceased respondent no.1.

4. LR No.4 of deceased respondent no.1 in the application filed U/o.XXII Rule 4 of C.P.C. stated that they are the legal heirs of respondent no.1. Her brother by name Suresh did not join them.

Hence he has not been brought on record. Their presence is necessary for proper adjudication of the case. Further, in the application filed U/o XXII rule 9 of C.P.C., and in the application filed under Sec.5 of Limitation Act, LR no.4 of deceased respondent no.1 stated that there is a delay of 70 days. The said delay is not intentional. They filed the applications within the period of limitation if calculated from the date of the knowledge.

5. The petitioner submitted no objections to the applications. Respondent no.2, 4 to 6 in the objections contended that the present applications have not been filed within the period of limitation. No reasons are forthcoming for the cause of the delay. LR No.4 of deceased respondent no.1 did not include male members. The applicants had knowledge about the death of respondent no.1. In spite of it they kept quiet. After completion of the prescribed time period, the petition automatically gets dismissed. In this regard, respondent no.2, 4 to 6 pray to reject the applications.

6. Heard arguments.

7. Considering the applications, following points arise for my consideration.

1. Whether LRs of deceased respondent no.1 have made out grounds to permit them to come on record?

2. Whether LRs of deceased respondent no.1 have made out grounds to set aside the order of abatement?
 3. Whether LRs of deceased respondent no.1 have made out grounds to condone the delay in filing the present application for them to come on record as the LRs of deceased respondent no.1?
 4. What order?
8. My findings for the above points are as follows.
- | | | |
|------------|---|--|
| Point No.1 | : | In the Affirmative, |
| Point No.2 | : | In the Affirmative, |
| Point No.3 | : | In the Affirmative, |
| Point No.4 | : | As per final order
for the following; |

R E A S O N S

9. **Point no.1 to 3:-** For the sake of convenience and to avoid repetition of facts all the points are taken together for common discussion. It is the case of LRs of deceased respondent no.1 that respondent no.1 died on 25-02-2023 leaving behind them and one Suresh as her legal heirs. Further, in the applications filed U/o XXII rule 9 of C.P.C., and U/Sec.5 of Limitation Act, LRs of deceased respondent no.1 stated that if the period of limitation is

reckoned from the date of the knowledge, the applications are filed within the stipulated period of time. Be it noted, respondent no.2, 4 to 6 did not dispute that applicants are the LRs of deceased respondent no.1. In this circumstance, there is no dispute about the applicants are the LRs of deceased respondent no.1.

10. It is to be noted that the present petition is for drawing final decree. Further there is no dispute that applicants are the LRs of the deceased respondent no.1. In these circumstances, considering the relief claimed in the petition, I am of the view that if LRs of deceased respondent no.1 are brought on record, the same is sufficient representation to the estate of deceased respondent no.1. Thus, the presence of the applicants having constitute sufficient representation to the estate of deceased respondent no.1, I am of the view that not bringing another son of respondent no.1, namely Suresh is of no consequence on the case of the applicants.

11. Further, from the applications it can be deduced that the applicants had no knowledge about the death of respondent no.1, hence there is a delay for them to come on record as the LRs of deceased respondent no.1. In this regard, considering the reasons stated for condoning the delay and to set aside the order of abatement, I am satisfied that there exist sufficient grounds for the failure on the part of the LRs of deceased respondent no.1 to come on record, within stipulated time. So also, it is settled

principle of law that the procedural law is hand maid of justice and procedural law should not be construed strictly so as to undermine justice. For this I rely on the decision of Hon'ble Supreme Court of India Salem Advocates' Bar Association v. Union of India cited in **AIR 2005 SC 3353** wherein it was held thus;

“The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules or procedure are handmaid of justice and not its mistress”.

Considering the facts and circumstances of the case, I am of the view that though there is delay in filing the present applications, having regard to the reasons set out to set aside the order of abatement and to condone the delay, I am of the view that justice and equity demands that it is not just and proper to dismiss the applications on technical grounds unless there is unreasonable delay, more particularly in view of the reasons stated in the application filed U/Sec.5 of the Limitation Act and in the application filed U/o XXII rule 9 of CPC. As such, regard being had to applications and facts and circumstances of the present case, I am of the view that LR of deceased respondent no.1 made out grounds to come on record, to set aside the order of abatement and condone the delay. Accordingly, I decide point No.1 to 3 in the Affirmative.

13. **Point no.4:-** In view of reasons on point No.1 to 3, I proceed to pass the following,

ORDER

I.A.Nos.III to V filed by the plaintiffs U/o.XXII Rule 4, U/o.XXII Rule 9 of CPC and U/sec.5 of Limitation Act are hereby allowed on cost of Rs.100/- each.

The order of abatement is set aside. The delay caused to come on record as the LR of deceased respondent no.1 stands condoned.

Petitioner is directed to carryout amendment to the petition and include applicants in the petition as the LR of deceased respondent no.1.

(Dictated to the Stenographer, typed by him, corrected by me and then pronounced in the open court on this the 5th day of June 2024)

(Hanumanth Satwik)
Senior Civil Judge & JMFC.,
Devadurga.