

**IN THE COURT OF THE PRL. SENIOR CIVIL JUDGE
AND CJM AT RAMANAGARAM**

Dated : This the 27th day of July 2016

Present

Smt. M.ANITHA.,
B.Sc., LL.B.,
Prl. Senior Civil Judge & CJM,
Ramanagaram.

O.S 271/2013

Plaintiffs : Smt.Gurusidamma and others

(By Sri. S.N., Advocate)

V/s

Defendants : Smt.Kamma and others

(By Sri. M.K., Advocate)

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ORDERS ON I.A-5 TO 7 DATED 11.01.2016
FILED BY THE PROPOSED LRS OF
DECEASED PLIANTIFF NO.4

The applicants being the proposed Lrs of deceased plaintiff No.4 have filed three applications.

2. I.A-5 is filed U/o 22 Rule 3 of CPC to bring the applicants as Lrs of deceased plaintiff No.4 and thereby permit them to continue the suit against the defendants.
3. I.A-6 is filed U/s 5 of Limitation Act to condone the delay in filing of the application to bring them as Lrs of deceased plaintiff No.4.

4. I.A-7 is filed U/o 22 Rule 9 r/w Sec.151 of CPC to set aside the abatement order and thereby permit them to come on record as Lrs of deceased plaintiff No.4
5. As these three applications are interconnected, the Court wishes to treat them collectively to avoid repetition of the orders & save the time of the Court.
6. In all the three affidavits anent to the above applications, the proposed legal representative No.4(d) deposed that, his deceased father Vishakantappa has filed the suit for partition and separate possession. During the pendency of the suit, the said Vishakantappa passed away on 11.11.14 & they are his legal representatives. They have no knowledge about the counsel whom his father Vishakantappa has engaged in the present suit and this apart their mother was suffering with ill-health and they engaged in providing treatment to their mother. Therefore, they could not file the application to bring them on record as Lrs of deceased plaintiff No.4 well within time. They have a right of partition in the suit schedule properties. Therefore, if delay is not condoned and abatement is not set aside, they will be put to hardship. Hence, it is prayed to allow the applications in terms sought.

7. The defendant No.4 filed the consolidated objection to all the three applications, wherein, he stated that, the applications are not maintainable as the prayer made therein is mis-conceived under the facts and circumstances of the case. The applications are filed to drag on the proceedings and false affidavits are filed in support of the applications. The averments made in the supportive affidavits to the applications are false. No grounds are made out to condone the delay. Wherefore, if the applications are allowed, the defendant No.4 will be put to hardship. Hence, it is prayed to dismiss the applications with costs.

8. In view of rival contentions of the parties, the following point emerge for consideration:-

Whether the applications deserve to be allowed?

9. Having heard the arguments, the Court perused the applications in the backdrop of materials made available. Now, findings of the Court on the point is in the "Affirmative" for the reasons herein after assigned:-

REASONS

10. On a first flesh, it is significant to mention that, the contesting defendant No.4 has not disputed the death, as well as the date of death of plaintiff

No.4. The death certificate of plaintiff No.4 is tabled before court and as it could be seen from the contents of this death certificate, the plaintiff No.4 namely Vishankantaiah passed away on 11.11.2014. As required under law, an application to bring the Lrs of deceased plaintiff No.4 is to be filed within 3 months reckoned from the date of death of the party. But, the current applications are pressed into service on 11.1.2016 i.e., after lapse of nearly 1 year 3 months. Except defendant No.4, other defendants have not raised any objections to the current applications. Even the objection statement filed by defendant No.4 is a very formal objection statement and no serious objection has been raised to dismiss the current applications.

11. No doubt, there is delay in filing of the application to bring the Lrs of deceased plaintiff No.4 on record. But, on this score itself the court could not dismiss the applications. Because, rules of limitation are not meant to destroy the rights of parties. They are meant to see that, the parties do not resort to dilatory tactics to seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life span for such legal remedy for redress of legal injury so suffered.

Further, there is no presumption that, the delay in approaching the court is always deliberate. The Hon'ble Supreme Court has held that, the words "Sufficient cause" U/s 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice.

12. In connection with the current applications, the Court wish to place reliance on the ruling of the Hon'ble High Court of Karnataka reported in ***KLJ 1992(2) page 26 Venkatamma V/s Madaiah dead by Lrs***, wherein, the Hon'ble High Court while dealing with order 22 Rule 4 has held as under:-

"When an application is made for condonation of delay for bringing the legal heirs on record, the sufficient cause shown therein should be liberally construed so as to advance the remedy and not to penalize the party. The Court is not expected to be too technical in considering the cause shown.

13. In the considered view of the Court the ratio laid down in the said ruling is squarely applicable to the case on hand. Hence, the Court inclined to hold the point in the "Affirmative" and proceed to pass the following:-

ORDER

I.A No.5 to 7 all dated 11.01.2016
filed by the proposed Lrs of deceased
plaintiff No.4 are hereby allowed.

No order as to costs.

(Dictated to the Stenographer, transcribed by him, the transcript corrected and then pronounced by me in the open Court on this the 27th day of July 2016)

**Prl., Senior Civil Judge & CJM,
Ramanagara.**