

IN THE COURT OF ADDL. SENIOR CIVIL JUDGE,
RAMANAGARA

:PRESENT:

Smt. K.Srividya, B.A.L., LL.M.,
Addl. Senior Civil Judge,
Ramanagara.

O.S. No.608/2013

DATED : THIS THE 28th DAY OF JULY 2017

Plaintiffs : Smt. Eramma and others.

- V/s -

Defendants : Thimmayya and others.

*** * * ***

Orders on I.As dated 06.04.2017

I.As dated 06.04.2017 applications are filed by the plaintiffs under Order 22 Rule 9, Order 22 Rule 3 of CPC and Section 5 of Limitation Act to set aside the abatement of suit against plaintiff No.2 and to condone the delay and permit the plaintiff No.2 LRs to be brought on record. The applications are accompanied by affidavits and xerox copy of Death Certificate of plaintiff No.2 and Genealogy Tree. Objections are filed to the said application by defendant No.2 & 3.

2. In the affidavits accompanying the applications, the applicant states that, her father had filed a suit for declaration and permanent injunction against the defendants. During the pendency of the suit, he died on 28.09.2016. Recently, they came to know about the pending litigation. Hence, prays to allow the applications and to condone the delay in filing the

application and set aside the abatement in the interest of justice and equity.

3. In the objections, apart from usual denial of averments mentioned in the affidavits accompanying the applications, the defendants No.2 & 3 submit that, plaintiffs No.1 & 3 were aware of the death of the 2nd plaintiff. In the cross-examination, this question has been raised. The LRs were also aware of the pendency of the suit. But, they all kept quite without taking any action. Hence, prays for rejection of the application.

4. The following points arise for my determination.

(1) *Whether the abatement against plaintiff No.2 has to be set aside and the LRs are to be brought on record ?*

(2) *What order ?*

5. Heard the Counsels.

6. My findings on the above points are as follows.

Point No.1 : In the Affirmative

*Point No.2 : As per final order
for the following :*

REASONS

7. POINT No.1 : Heard the counsels and perused the records. The suit is filed for declaration that, they are the absolute owner of suit schedule property and for consequential reliefs. Undisputedly, as per the death certificate produced by the plaintiff, the 2nd plaintiff having died, it is necessary to bring the LR's of the 2nd plaintiff on record. Since, there was an inordinate delay in filing the applications this Court views that, in the interest of justice the applications could be allowed by imposing cost. with this observation, **Point No.1 is answered in the Affirmative.**

8. Point No.2 : Based on findings in Point No.1, proceed to pass the following;

ORDER

I.A.s dated 06.04.2017 filed by the plaintiffs under Order 22 Rule 9, Order 22 Rule 3 of CPC and Section 5 of Limitation Act for setting aside abatement of suit against 2nd plaintiff and bringing LR's of 2nd plaintiff on

record is hereby allowed on cost of Rs.300/-.

The LRs of plaintiff No.2 are brought on record as plaintiff No.2(a) to 2(e).

The plaintiffs are directed to carry out the amendment of plaint and file amended plaint by next date without fail.

The parties are directed to co-operate with the Court for speedy disposal of the suit.

**Addl. Senior Civil Judge,
Ramanagara.**