

**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL
JUDGE AND CJM, RAMANAGARAM**

Dated This 5th day of November 2019

PRESENT:

Sri. N.S. Kulkarni

**B.Com., LL.B., Spl.,
Prl., Senior Civil Judge and CJM,
Ramanagara.**

O.S 549/2012

Plaintiffs : Smt. Chikkamma & another

(By Sri. P.K., Advocate)

V/s

Defendants : Smt. Venkatalakshamma & others.

**(D1 and D2 by Sri. K.B.V., Advocate)
(D3 to D7 absent)**

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**ORDERS ON I.A DATED 27.03.2019
FILED BY THE LRS OF PLAINTIFF No.2
U/O 22 RULE 3 R/w sec. 151 OF CPC**

The present application is filed to permit the legal representatives of deceased plaintiff no.2 to bring legal representatives of deceased plaintiff No.2 in the present suit.

2. In the affidavit appended to the application,

one of the legal representatives of deceased plaintiff No.2 namely Shivarudraiah deposed that, the 2nd plaintiff died leaving behind them and they are legal heirs. The present case is remanded suit and they are right to sue survives on them. Therefore, it is necessary to brought them on record as legal representatives of deceased plaintiff No.2. No harm or prejudice will be caused to the defendants if they are brought on record as legal representatives of deceased plaintiff No.2. Suppose the application is rejected, they will be put to great loss and injury, which cannot be compensated by any means. Wherefore, it is prayed to allow the application.

3. The defendant No.1 and 2 resists the application on filing their objection statement. they objected that, the plaintiff No.2 has died along back and proposed legal heirs of deceased plaintiff No.2 has not been mention the date of death of plaintiff No.2 in the application. The present applicants have been set up by the proposed legal heirs with irresponsible contents of affidavit and they have not file any application to

set aside the abatement and to condone the delay in the filing of present application. The affidavit filed by the one Shivarudraiah is also false and they are not come with clean and true facts of the present case. Wherefore, it is prayed to dismiss the application with costs.

4. In the background of rival contention of the parties, the following point is formulated for consideration:-

*Whether the application filed by the plaintiff
U/o 22 Rule 3 r/w Sec.151 of CPC deserves
to be allowed?*

5. Having given my anxious consideration to the arguments of both the counsels, I have scrutinized the application in the background of affidavit related to the same. Now, my answer on the point is in the “Affirmative” for the following:-

REASONS

6. As it could be seen from the records of the case. The case already decided on 10.06.2015 and the suit came to be decreed and the plaintiffs are

entitled for partition and separate possession of their $\frac{1}{4}$ share each. After remanded the suit, the present application filed the plaintiff and reported the death of plaintiff No.2 and permit to bring the legal representatives of deceased plaintiff No.2 on record. At this point, it is pertinent to mention that, In the present suit for partition and separate possession, the legal representatives of deceased plaintiff No.2 are all necessary parties, since the right to sue survives against them.

7. In the ruling of Hon'ble High Court of Karnataka reported in KLJ 1992 (2) page 26 Venkatamma V/s Madaiah dead by legal representatives, it is 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. It cannot be brushed aside that, the plaintiff had contended that, he was not aware of the death of Jdr and learnt about

the same only after the notice issued came to be returned with a postal shara that, Jdr had died. The substitute the legal representative of Jdr in the place of Jdr.

8. The ratio laid down in the said ruling is applicable to the case on hand, the legal representatives of deceased plaintiff No.2 gained knowledge about after the remanded suit. Hence, for the reasons mentioned supra, I am inclined to hold the point is in the “Affirmative” and resultantly I proceed to pass the following:-

ORDER

I.A dated 12.03.2019 filed by the LRs of plaintiff No.2 U/o 22 Rule 3 of CPC is hereby allowed.

No order as to costs.

(Dictated to the typist directly on computer, corrected by me and then pronounced in the open Court on this the 5th day of November 2019)

**Prl., Senior Civil Judge and CJM,
Ramanagaram.**