

Order on I.A.No.10 to 12

I.A.No.10 is filed by the Plaintiffs under Order XXII Rule 4 of the CPC with a prayer to permit them to bring the Lrs of the deceased Defendant No.1 on record.

2. I.A.No.11 is filed by the Plaintiffs under Order XXII Rule 9 of the CPC with a prayer to set aside the order of abatement of the suit, if any.

3. I.A.No.12 is filed by the Plaintiff under Sec.5 of the Limitation Act to condone the delay in filing the present applications.

4. The Plaintiff No.1 has sworn to affidavits to all the three I.A's .

5. In pursuance of the service of notice of the present I.A's, the LR 1(b) and 1 (c) have appeared and filed common objections to the present I.A's by opposing to allow the same on the ground that the same are not maintainable and that despite the Plaintiffs, being aware of the death of the Defendant No.1 on 2-5-2021, the Plaintiffs have filed these applications belatedly with a malafide intention. That the 1st Plaintiff has sworn to a false affidavit. despite the the Respondent has not filed any objections to these I.A.'s. Accordingly, they have prayed to dismiss the applications. The Defendant No.1 (a) has not filed any objections to the I.A's.

6. Heard the learned counsel for the Plaintiffs and the Defendant No.1 (b) and (c) on I.A.10 to 12 and perused the records.

7. I have gone through the contents of the affidavits sworn in support of the present applications by the Plaintiffs No.1 to the I.A.No.10 to 12 and also the other materials on record. The present suit being filed by the Plaintiffs seeking the relief of partition and separate possession, undisputedly the right to sue survives against the Lrs of the deceased Defendant No.1. Therefore, it is necessary that all the LRs of the deceased Defendant No.1 are to be brought on record as the right to sue survives and they are the necessary parties to the present proceedings and as such, they must be impleaded as parties to the present proceedings.

8. It is a well settled position of law that, in a suit for partition and separate possession, the cause of action survives even in the event of death of any of the party/parties to the suit or proceedings. Hence, in order to adjudicate the matter in dispute between the parties effectively and completely, I proceed to pass the following:-

ORDER

I.A.No.10 under Order XXII Rule 4 of the CPC, I.A No.11 under Order XXII Rule 9 of the CPC and I.A.No.12 under Sec.5 of the Limitation Act filed by Plaintiffs are hereby allowed.

The delay in filing the applications is hereby condoned.

The order of abatement of the suit as against the Defendant No.1 is hereby set aside.

The counsel for the Plaintiffs is permitted to bring the Lrs of the Defendant No.1 on record and further directed to carryout amendment to the cause title of the plaint and file amended plaint by:-

08-12-2022.

Prl.Senior Civil Judge & CJM,
Ramanagara.