

**IN THE COURT OF THE PRL.CIVIL JUDGE & JMFC.,
HOSANAGARA.**

DATED THIS THE 22nd DAY OF SEPTEMBER, 2023.

**PRESENT:- RAVIKUMAR K., B.A.L. LLB.,
Prl.Civil Judge and JMFC., Hosanagara.**

O.S. No.89/2022

PLAINTIFFS : 1. Smt. Gangamma W/o Dharmappa,
Aged about 63 years,
Agriculturist,
R/o Hodalagadde, Humcha Hobli,
Hosanagara Taluk.

2. Shekharappa S/o Late Gundanna
Aged about 62 years,
Agriculturist,
R/o Chandaladimba, Baluru Village
Kerehalli Hobli, Hosanagara Taluk

3. Smt. Eramma W/o Suresha
Aged about 49 years,
Agriculturist,
R/o Kannangi, Thirthahalli Taluk

4. Smt. Saraswati W/o Prakash T.,
Aged about 48 years,
R/o Kumsi, Shivamogga District.

5. Smt. Venkamma W/o Chandrappa N.
Aged about 54 years,
Agriculturist,
R/o: 1st main road, Park road
Puttamma Compound,
Shivamogga Town.

(By: Sri. B.S.Vinayaka, Advocate)

DEFENDANTS : 01. Basappa S/o Late Manjanna
Aged about 61 years,

02. Nagappa S/o Late Manjanna
Aged about 58 years,

D1 and 2 are the agriculturist,
R/o: Chandaladimba, Baluru Village,
Kerehalli Hobli,
Hosangara Taluk.

(By:D.N. Hiriappa, Advocate)

ORDERS ON I.A.NO.II TO IV

The proposed plaintiffs have filed IA No.II under Order XXII Rule 3 of CPC, IA No. III under Section 5 of Limitation Act and IA No. IV under Order XXII Rule 9 of CPC.

Legal heirs of late plaintiff No.2:

P2(a) – Nagaratna W/o Late Shekarappa, Age: 54 years,

P2(b) - Manjunatha S/o Late Shekarappa, Age: 28 years,

P2(c) - Manukumara C.S. S/o Late Shekarappa, Age: 25 years,

P2(d) - Madhu S. S/o Late Shekarappa, Age: 24 years,

P2(a) to P2(d) are agriculturist,
R/o: Baluru Village, Kerehalli Village,
Hosanagara Taluk.

2. The proposed plaintiff No.2(c) in his affidavit stated that, during the pendency of the said suit, the plaintiff No.2 Sri.Shekarappa S/o Late Gundanna, died on 27.09.2022 due to his ill health. Hence the LR's of deceased are to be brought on record. That after the death of plaintiff No.2, the rights sue continues. The reason for delay in bringing the application is, due to the sudden death of plaintiff No.2, they are not in position to come out of the shock and mental agony. As such the suit came to be abated. Now, proposed plaintiff No.2(c) is filing the LR's application to allow for setting aside abatement.

3. Hence, they have filed the applications for condoning the delay and set aside the delay if any, If the applications are not allowed the proposed plaintiffs will be put substantial injury. The LR's are also necessary parties for complete disposal of the case.

4. The defendants' counsel submitted no objection to allow the petition.

5. Heard argument of learned counsel for plaintiffs and defendants.

6. On perusal of IA No.II to IV it appears that, during the pendency of the said suit, the plaintiff No.2 Sri.Shekarappa S/o Late Gundanna, died on 27.09.2022

due to his ill health. Hence, the Lrs of deceased are to be brought on record. That after the death of plaintiff No.2, the rights sue continues. Hence prays to allow the IAs. On the other hand, the defendants counsel has no objection to allow the IAs.

According to O-22 rule-9 – Effect of abatement or dismissal. (1) Where a suit abates or is dismissed under this Order, no resh suit shall be brought on the same cause of action.

(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

(3) The provisions of section 5 of the Indian Limitation Act, shall apply to applications under sub-rule(2)

O-22 Rule 4 –Procedure in case of death of one of several defendants or of sole

defendant- (1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit. (2) Any person so made a party may make any defense appropriate to his character as legal representative of the deceased defendant.

7. According to Article 122 of Limitation Act applicants have brought the legal heirs of deceased plaintiff is to be filed within 90 days from the date of death of the party. If at all the legal heirs have not filed the said application within 90 days automatically suit will abate against deceased. Similarly according to Order 22 Rule 9 of C.P.C. application can be filed for setting aside abatement order within 60 days.

8. According to Article 121 of Limitation Act even after suit is abated it is to be filed within 60 days from the

date of abatement for setting aside the abatement order. In the present case, the plaintiff No.2 died on 27.09.2022, about 5 months 2 days back.

9. The petitioners submitted that, during the pendency of the suit, the plaintiff No.2 Sri.Shekarappa S/o Late Gundanna, died on 27.09.2022 due to his ill health and within the period of limitation, they have not able to file necessary application due to sudden death of plaintiff No.2, they are not in position to came out of the shock and mental agony. And they are not able to intimate their counsel to file necessary application. The delay in filing the above applications are not intentional one, the delay is bonafide one. Hence, they are prays to allow the applications for bringing LR's. Hence, considering the reasons given in the annexed affidavit the delay caused by the petitioners is bonafide one. Hence, the same is condone.

10. The applicants have filed necessary applications to substitute the proposed LR's deceased plaintiff No.2 to continue with the proceedings as right to sue survives.

11. So under the facts and circumstances of the case I am of the opinion that the applicants are able to made out sufficient ground to allow the applications, to bring the legal

heirs of plaintiff No.2 on record and also made out sufficient grounds to set aside the abatement order. It is well-settled principle of law that substantial justice should not be denied merely for the technical reasons. Hence, I am of the opinion that I.A. No.II to IV are fit to be allowed. Hence, proceed to pass the following:

ORDER

I.A.No.III filed by the plaintiffs U/Sec.5 of Limitation Act is hereby allowed. Delay in filing application for set aside abatement is hereby condoned.

I.A. No.IV under Order XXII Rule 9 R/w Section 151 of C.P.C. filed by the plaintiffs is hereby allowed and abatement order is hereby set-aside.

I.A. No.II filed by the plaintiffs under Order XXII Rule 3 R/w Section 151 of C.P.C. is hereby allowed and the Lrs of deceased plaintiff No.2 are hereby permitted to come on record.

For amendment of plaint to carried
out amendment.

(Dictated to Stenographer and typed her, then revised, corrected,
signed and then pronounced in the Open Court on this the 22nd Day
of September, 2023)

(RAVIKUMAR K.)

Prl. Civil Judge and J.M.F.C.,
Hosanagara.

(Order prepared separately and pronounced in the Open Court)

ORDER

I.A.No.III filed by the plaintiffs U/Sec.5 of Limitation Act is hereby allowed. Delay in filing application for set aside abatement is hereby condoned.

I.A. No.IV under Order XXII Rule 9 R/w Section 151 of C.P.C. filed by the plaintiffs is hereby allowed and abatement order is hereby set-aside.

I.A. No.II filed by the plaintiffs under Order XXII Rule 3 R/w Section 151 of C.P.C. is hereby allowed and the Lrs of deceased plaintiff No.2 are hereby permitted to come on record.

For amendment of plaint to carried out amendment R/by: 09.11.2023.

The plaintiff counsel has filed an application under Section 151 of CPC and prays to extend the Exparte TI Order.

Heard. Other side not objected. Hence, TI is extended till next date of hearing.

**Prl. C.J and JMFC,
Hosanagara.**