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IN THE COURT OF THE ADDL. SR. CIVIL JUDGE &
JMFC, BHADRAVATHI.

Present: **Smt. V.N.Milana**, B.A.L., LL.B.,
Addl. Sr. Civil Judge & JMFC,
Bhadravathi.

Dated this the 3rd day of January, 2023.

O.S. No. 34/2020

Plaintiff : Khateeja Bi

-versus-

Defendants : Mehanoob Sab and others

In I.A. No.12, 13 and 15

Applicant/Plaintiff: Khateeja Bi W/o Khalandar Sab,
D/o late Ummar Sab, Aged about
45 years, Agriculturist, R/o
Donabaghatta Village, Kasaba
Hobli, Bhadravathi Taluk.

(By Sri.R.K.Advocate)

-versus-

Opponents/

L.Rs.of defendant No.2:

D2(a). Farida Bi W/o late Syed Raheem Sab, Aged about 51 years,

D2(b). Syed Shaffi S/o late Syed Raheem Sab, Aged about 30 years,

D2(c). Syed Mubaraq S/o late Syed Raheem Sab, Aged about 28 years

D2(d). Asiya Bi D/o late Syed Raheem Sab, Aged about 26 years.

D2(e). Syed Sajid S/o late Syed Raheem Sab, Aged about 23 years.

D2(f). Syed Rahid S/o late Syed Raheem Sab, Aged about 21 years.

All are agriculturists, R/o Donabaghatta Village, Bhadravathi Taluk.

(D2(a) to (e) by Sri. A.B. Advocate
D2(f)-Absent)

ORDERS ON I.A.No.12, 13 and 15

At the stage of plaintiff evidence, the petitioner/plaintiff has filed I.A.12 under Order 22, Rule 4 and Sec. 151 of C.P.C., prays to implead petition mentioned persons as proposed defendants Nos.D2(a) to 2(f).

2. The plaintiff has filed I.A.13 under Order 22 Rule 9 and Sec. 151 of C.P.C., prays to set aside the abatement order.

3. The plaintiff has filed I.A.15 under Sec.5 of the Limitation Act to condone the delay in filing the application to implead the legal heirs of deceased defendant No.2.

4. In support of these applications, plaintiff has sworn to an affidavit and stated that defendant No.2 died on 30.06.2021, leaving behind his wife and children as his legal heirs. They are the proper and necessary parties in this case. They should be impleaded as defendant 2(a) to 2(f). The right to sue devolves upon them. Further stated that there is a delay in filing the impleading application to bring the legal heirs of deceased defendant No.2. The delay in filing the application is not intentional and deliberate. Therefore, it is just and necessary to condone the delay in filling the application. Accordingly prays for allow the petition.

5. After service of Notice, the proposed defendants have not appeared and not filed objections.

6. Heard arguments. Perused the records.

7. The point that would arise for consideration is:

Whether the petitioner/plaintiff has made out any ground to allow the applications?

8. My findings on the above point is in the '**Affirmative**' for the following:

REASONS

9. Admittedly this is a suit for partition and separate possession. Though the defendant No.2 died on 30.06.2021, the application for impleading should have been brought within 3 months from the date of death or from the date of knowledge of death. The reason assigned by the plaintiff is that, defendant No.2 died on 30.06.2021, leaving behind his legal heirs. They are proper and necessary parties in this case. They should be impleaded as defendant 2(a) to 2(f). The right to sue devolves upon them. Further stated that there is a delay in filing the impleading application to bring the legal heirs of deceased defendant No.2. The delay in filing the application is not intentional and deliberate. Therefore, it is just and necessary to condone the delay in filling the applications.

10. It is relevant to note that as per Article 120 of Limitation Act, the legal representatives of the deceased defendant has to be brought on record within 90 days from the date of death of the defendant, failing which the suit gets abated. Further as per Article 121 of Limitation Act, the application has to be filed to set aside the order of abatement within 60 days from the date of abatement. But the plaintiff has stated that the defendant No.2 died on 30.06.2021 and the plaintiff has filed the present applications on 03.03.2022 praying to set aside the abatement order and also by condoning the delay. It is relevant to note that, in the affidavit, the plaintiff has assigned sufficient reasons to condone the delay. Hence considering the facts and circumstances and principles of natural justice, I am of the opinion that there is no materials on record to disbelieve the version of plaintiff.

11. It is relevant to note that Sec. 5 of Limitation Act has conferred the power to condone delay in order to enable the courts to do substantial justice to parties by disposing of matter on 'merits'. Further the expression 'sufficient cause' is adequately elastic to enable the court to apply the law in a meaningful manner which serves the ends of justice. Under such circumstances, I am of the view that the plaintiff has shown sufficient cause for bringing the LR's of defendant No.2 on record in time.

12. Since, legal heirs of deceased defendant No.2 are also necessary parties as cause of action survives against them. The maxim actio personalis moritur cum persona is not applicable, as it is void against the principles of natural justice, equality and good conscience. In view of the above fact, I am of the view that even if there is some delay, said delay can be condoned in the interest of justice. In the result, I proceed to pass the following:

ORDER

I.A.Nos.12, 13 and 15 are allowed on cost of Rs. 100/- each.

Legal heirs of defendant No.2 are ordered to be brought on record by setting aside the abatement against him.

(Dictated to the Stenographer, typed by her directly through computer, corrected and then pronounced by me in open Court, this the 3rd day of January, 2023.)

(V.N.Milana)
ADDL. SR. CIVIL JUDGE & JMFC,
BHADRAVATHI.

