

**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC AT
GUBBI**

Dated this the 20th day of June 2025

:: PRESENT::

**KIRAN S.P., B.B.M., LL.B.,
Prl. Civil Judge & JMFC, Gubbi**

OS No. 49/2019

Plaintiffs : - Gangabairaiiah dead by Lrs

V/s.

Defendants :- Venkatamma and others

Cause Title On IA NO. 7 to 9

Applicant: - Prabhakara (Lrs of plaintiff)

(By Sri. S.R., Advocate)

Respondent: Venkatamma and others (defendants)

(By Sri.B.S.L., Advocate)

: COMMON ORDER ON I.A. No. 7 to 9 :

The applicant/ Lrs of plaintiff has filed IA No. 7 U/O 22 rule 4 of CPC, IA No.8 U/O 22 Rule 9 of CPC, and IA no.9 U/S 5 of Limitation Act and praying for permit him to implead legal representative of defendant No.4 as defendant No.4(a) to (c) by setting aside the abatement order by condone the delay in filing applications.

2. The said applications are accompanied with an affidavit of Lrs of plaintiff and stating that, his father has filed the above suit against the defendants for partition and separate possession of the suit schedule properties and said case is posted for steps. During the pendency of the suit, the defendant No.4 Manjunatha was died on 31.01.2024 leaving behind him, his Lrs as stated in the annexed application. Right to sue survives against the Lrs of deceased defendant No.4. No harm would be caused to the other side, if his application is allowed, if application is not allowed, he would be put to much hardship and injury which cannot be compensated in terms of money. Therefore he prays to allow the applications.

3. In spite of issuance of notice on these applications are served, the Lrs of deceased defendant No.4 have not appeared before the court. Hence objections to these applications are taken as nil.

4. Heard Arguments, perused materials placed on record.

5. The points arise for the determination of this court as under.

Point No.1: Whether the Lrs of the plaintiff has made out sufficient grounds to allow IA No.7 to 9?

Point No.2: What order?

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: I have gone through the plaint averments, the plaintiff has filed this suit against the defendants for seeking the relief of partition and separate possession over the suit schedule property. On perusal of the affidavit averments, it reveals that defendant no.4 died on 31.01.2024. Since it is a suit for partition and separate possession, the right to sue is survive on the LR's of the deceased in the present suit. But LR's of defendant No.4 was not brought on record in time. IA No.7 is filed after expiry of Limitation Period. Instead of throwing out the application on technical grounds, it is just and necessary to give an opportunity to the Lrs of plaintiff to bring the LR's of defendant No.4 on record as defendant No.4(a) to (c). If the applications are allowed by setting aside the abatement order by condone the delay, no hardship or injury would be caused to the other side, per-contra if applications are not allowed the Lrs of plaintiff will be deprived an opportunity to get the case adjudicated on merits. Hence I am of the opinion that Lrs of plaintiff has made out sufficient grounds to allow applications by setting aside abatement order by condone the delay in filing applications. Accordingly, I answer Point no 1 in the Affirmative.

8. POINT NO. 2: For the foregoing reasons, I proceed to pass the following;

: ORDER :

IA No.7 filed by the Lrs of plaintiff U/O 22 Rule 4 of CPC, IA No.8 filed by the Lrs of plaintiff U/O 22 Rule 9 of CPC and IA No.9 filed by the Lrs of the plaintiff U/S 5 of Limitation Act are allowed on cost of Rs. 200/-.

It is directed to the Lrs of plaintiff to bring the legal representatives of defendant No.4 on record as defendant No.4(a) to (c) in this suit by carry out necessary amendment to the cause title of the plaint.

(Dictated to the stenographer, transcribed by him, corrected and then pronounced in the open Court on this the 20th day of June 2025)

(KIRAN S.P)
Prl. Civil Judge & JMFC,
Gubbi