

: ORDER ON I.A.No.VI

The plaintiff No.1 has filed I.A. No.VI under Order 22 Rule 4, Order 22 Rule 9 and Sec.5 of the Limitation Act seeking to bring the Lrs., of deceased plaintiff No.2 and proceed with the matter in the ends of justice.

2. The plaintiff No.1 has sworn to an affidavit in support of this I.A. and contended that during the pendency of the suit plaintiff No.2 died by leaving behind plaintiff No.1 as his only Lrs., as such the right to sue survives on him. This being the case it is necessary to permit him to contest the matter on behalf of plaintiff No.2 by setting aside the abatement order. He could not file this I.A. within time, the delay is not intentional, but for the bonafide reasons. Hence, prays to allow the I.A. in the interest of justice and equity.

3. The defendants have filed objections to this I.A. and contended that the said application is not maintainable either in law or on facts and there are no valid and tenable grounds to allow the I.A. The plaintiff has sworn to a false affidavit, though plaintiff No.2 died on 25.10.2022 and the same was reported in the month of January 2023 so far and plaintiff has failed to take steps and therefore the suit of plaintiff No.2 was abated. Hence, prays to dismiss the I.A. with exemplary cost.

4. Heard, perused the plaint and I.A. averments.
5. The points that arise for my consideration are as follows;
 1. Whether I.A.No.VI filed by the plaintiff No.1 under Order 22 Rule 4, Order 22 Rule 9 of CPC and Sec.5 of Limitation Act is deserves to be allowed?
 2. What order?
6. My findings to 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:** Plaintiffs have filed the suit for declaration and partition with respect to suit schedule properties. Plaintiff No.1 and 2 are the sons of late Erappa, as the plaintiff No.1 has reported the death of plaintiff No.2 in the month of January 2023 and thereafter he failed to take steps within the period of limitation and therefore the suit in favour of plaintiff No.2 was abated, later with the delay of 3 months plaintiff No.1 has filed this I.A. No.VI seeking an order to set aside the abatement order. As per the G-Tree shown in the plaint, plaintiff No.2 is the brother of plaintiff No.1 and according to him plaintiff No.2 has no other Lrs., the same is not denied by the defendants in their

objection. Considering that this is a suit for partition and plaintiff No.1 is his brother, it is just and proper to condone the delay in filing the LR application. The delay appears to be bonafide, therefore abatement order requires to be set aside in the interest of justice. Hence, I.A deserves to be allowed. Accordingly, I answer Point No.1 **in the Affirmative.**

8. **POINT No.2:** For the reasons stated above, I proceed to pass the following;

: ORDER :

I.A.No.VI filed by plaintiff No.1 under Order 22 Rule 4, Order 22 Rule 9 and Sec.5 of the Limitation Act are hereby allowed on cost of Rs.200/-.

The abatement order dated 02.06.2023 is hereby set aside.

The plaintiff No.1 is permitted to contest the matter on behalf of plaintiff No.2.

**Prl. Senior Civil Judge & JMFC.,
Madhugiri.**

: ORDER ON I.A.No.VII AND VIII

Defendant No.8 and 9 have filed I.A. No.VII under Order 9 Rule 7 of CPC to set aside the ex parte order and permit them to contest the matter and filed I.A. No.VIII under Sec.151 of CPC seeking permission to file the written statement and prosecute the case in the ends of justice.

2. The defendant No.9 has sworn to an affidavit in support of these I.As' and contended that plaintiffs have filed the suit for partition and separate possession seeking their legitimate share in the suit properties and also in the property on which sale deed is executed on 25.11.1978 in favour of their father. Due to illness he could not engage the counsel and contest the matter at the earliest stage, hence prays to set aside the ex parte order and permit them to contest the matter by filing written statement. Hence, prays to allow the application in the interest of justice and equity.

3. The plaintiffs have filed objections to these I.As' and contended that the said applications are not maintainable either in law or on facts and there are no valid and tenable grounds to allow the same and applications are also highly belated one. After service of summons defendants have not appeared before this court intentionally and after lapse of 3 years this applications are filed. Hence, prays to dismiss these applications with exemplary cost in the interest of justice.

4. Heard, perused the plaint and I.A. averments.
5. The points that arise for my consideration are as follows;
 1. Whether I.A.No.VII and VIII filed by defendant No.8 and 9 under Order 9 Rule 7 and Sec.151 of CPC., are deserves to be allowed?
 2. What order?
6. My findings to 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:** Plaintiffs have filed the suit for declaration and to declare that they are the absolute owners in possession and enjoyment over 'B" schedule properties and if court comes to the conclusion no partition was effected, then they prays for decreeing the suit for partition and separate possession by allotting half share in the "A" schedule properties. Though the suit was filed in the year 2019, the plaintiff has not yet commenced his evidence. Notice to defendant No.8 and 9 was duly served in the month of September 2019 and since they remained absent they were placed exparte. Since this is a suit for partition and separate possession and defendant No.8 and 9 have their right over the properties through registered

sale deed dated 25.11.1978, an opportunity shall be given to them to contest the matter by setting aside the exparte order. The delay caused by defendant No.8 and 9 for appearance shall has to be compensated by imposing cost. Hence, I.As.' deserves to be allowed. Accordingly, I answer Point No.1 **in the Affirmative.**

8. **POINT No.2:** For the reasons stated above, I proceed to pass the following;

: ORDER :

I.A.No.VII and VIII filed by defendant No.8 and 9 under Order 9 Rule 7 and Sec.151 of CPC., are hereby allowed on cost of Rs.500/-.

The order placing defendant No.8 and 9 exparte is hereby set aside.

Defendant No.8 and 9 are permitted to contest the matter by filing written statement.

The written statement filed by defendant No.8 and 9 is taken on record for additional issues.

**Sd/-
Prl. Senior Civil Judge & JMFC.,
Madhugiri.**

