

ORDERS ON I.A.Nos. XXII and XXIII

Plaintiff has filed the IA No.XXII U/o. I Rule 10(2) R/w Section 151 of CPC seeking permission for impleading the proposed defendants as mentioned in the application in question as additional defendants and IA.No. XXIII U/Sec. 5 of limitation Act.

2. Counsel for plaintiff has orally opposed the IA Nos. XXII and XXIII respectively and sought for dismissal of the applications in question.

3. Heard the arguments on I.A.Nos.XXII and XXIII. I have gone through the materials available on record. The following points arise for my determination.

(1) Whether the plaintiff has made out a case so as to allow I.A.No.XXII filed Under Order I Rule 10(2) C.P.C and XXIII filed U/Sec. 5 of limitation Act.?

5. My findings to the above point is in the **Affirmative** for the following:

REASONS

6. The plaintiff has filed the present suit against the defendants for the relief of declaration; partition and separate possession. During the pendency of the suit defendant No.9 and 13 are reported to be dead on 21-10-2019 and 06-12-2019 respectively.

7. In the affidavit filed in support of application in question, it is contended that, the defendant No.s 9 and 13 died during the pendency of suit and that the defendant No. 9(a) and 13(a) are only the legal heirs of deceased defendant No. 9 and 13. That the said proposed defendants are necessary parties in the present suit and that the delay in coming on record as proposed defendants may be condoned in the interest of justice and sought for allowing the application in question.

8. Learned counsel for plaintiff strongly objected to allow the application on the ground that the proposed defendant cannot maintain such application and the same is false frivolous and not tenable under law. That there is inordinate delay in filing the said

application which is not maintainable under law and sought for dismissal of the same. Counsel for defendant No.7 filed objection contending that the plaintiff is the dominant litigant and defendant cannot maintain such application since it is like usurping the power and privileges of the plaintiff and the correct provision to bring the LR's are enumerated under order XXII of CPC. Hence sought for dismissal of the applications.

9. It is pertinent to state here that, the present suit has been filed in the year 2012 for the relief of partition and that, the learned counsel for plaintiff has not disputed that, except the proposed defendants there are other legal heirs to the defendant No.s 9 and 13 as mentioned in the IA No.XXII. He has also not disputed that the proposed parties mentioned in the application are not the necessary parties to the present suit. The application for bringing LRs of deceased plaintiff and defendants was governed by the provisions under Order 22 of C.P.C. However, Order 1 Rule 10 of Code of Civil procedure allows the court to add a person as party to a suit at any stage of the proceedings if their presence is necessary for the court

to make complete adjudication this including the legal representative of a deceased party to a suit that as abated because the legal representative were not brought on record and the court can exercise this discretion. Considering the nature of the suit relief sought for in the suit, it appears that, the present application ought to be allowed for the effective and complete adjudication of the suit. At this stage, it is not just and proper to decide the applications based on technicalities. It is well settled that, in a partition suit, all persons interested in the properties are necessary parties and the rights of the parties as well as the shares to which they would be entitled can only be determined in the presence of all persons interested in the properties. Considering all these aspect, it is just and proper to allow the application in question to meets and ends of justice though the application filed 1 Rule 10(2) of C.P.C. Consequently delay caused by the defendant No.9(a) and 13(a) to come on record may be condoned. Therefore IA.NO.XXIII deserves to be allowed. Therefore, I answer the point under consideration in the Affirmative and proceed to pass the following;

ORDER

ORDER IA No. XXII filed U/o 1 Rule 10(2) R/w sec 151 of CPC and IA.No.XXIII filed under section 5 of the limitation Act are hereby allowed as prayed for. Call on for amendment and to furnish amended plaint by 27-03-2024.

**Prl.Civil Judge and J.M.F.C-II,
Karwar**