

Common Orders on IA U/sec.5 of Limitation Act, I.A. U/O.22 Rule 4 of CPC and I.A. U/O.22 Rule 9 of CPC

The plaintiff has filed these applications U/O.22 R.4 of CPC, U/sec.5 of Limitation Act and U/O.22 R.9 of CPC seeking permission to bring on record as L.R.s of Defendant No.1 and 3 and to condone the delay in filing the L.R. application and to set aside the abatement order if any passed in the above case against the defendants.

In the accompanying affidavits annexed to the applications, it is stated that this suit is filed against the defendants for the relief of Declaration & Partition. During pendency of the suit the defendant No.1 died on 22/11/2021 and defendant No.3 died on 30/04/2020 leaving behind the proposed defendant No.1(a) and 1(b) and defendant No.3(a) to (d) their Class-I legal heirs. The death of defendants not known to plaintiff and hence, there is delay of 1 year 10 months 2 days and delay of 3 months in filing the said applications. However, as per law it is very much necessary to bring on records as L.Rs. of Defendant No.1(a) & (b) and defendant No.3(a) to (d). The right to sue survive upon the Defendant No.1(a) & (b) and Defendant No.3(a) to (d). It is just and necessary to bring the L.Rs. of defendants, as they are proper and necessary persons in the subject matter.

The Plaintiff also sought to set-aside the abatement order if any passed against the defendant No. 1 and 3. On all these grounds, the plaintiffs prays for allowing the I.A.s.

The counsel for the opponents have filed no objections to the above I.A.s.

Heard the learned counsels for the plaintiff and defendants counsel. Perused the materials available on record.

This suit is filed by the plaintiff against the defendants for the relief of declaration and Partition. During pendency of this suit, the defendant No.1 and defendant No.3 died. The legal heirs of defendant No.1(a) & (b) and defendant No.3(a) to (d) are the necessary parties to this suit to decide the matter effectively and the right to sue survives against the legal heirs of defendant. However, it is settled principle of law that the provisions of Limitation Act shall be construed liberally. Therefore, in the interest of justice the applications deserve to be allowed. Hence, I proceed to pass the following:

ORDER

The I.A.s filed by plaintiff under O.22 R.4 of CPC, U/Sec.5 of Limitation Act and U/O.22 Rule 9 R/w. 151 of CPC are hereby allowed.

The legal heirs of Defendant No.1 and 3 are impleaded to this suit as Defendant No. 1(a) & (b) and defendant No.3(a) to (d) by condoning the delay in filing the L.R. application.

For amendment and amended plaint by
05/12/2022.

Prl. JMFC, Karwar