

KAUK030017312018



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

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

2. In the accompanying affidavits annexed to the applications, it is stated that the suit schedule properties are ancestral properties belonging to one Late Sri. Soiru S/o. Rama Bhandari @ Kalgutkar and the plaintiffs and defendants No.9 to 12 are the family members of the aforesaid person. The Defendant No.1 has died leaving behind his sons as his legal heirs. As such the Plaintiff No.2 intends to bring the following L.Rs. of D1 on record.

- (a) **Shri. Kishan,**  
S/o. Late Sri. Suresh Padwalkar,  
Aged about 40 years
- (b) **Shri. Roshan,**  
S/o. Late Sri. Suresh Padwalkar,

Aged about 35 years

Both are residents of Majali, Karwar.

3. During pendency of the suit the defendant No.1 died on 22.11.2021 leaving behind the proposed defendant No.1(a) and (b) as his Class-I legal heirs.

4. The Hon'ble High Court of Karnataka issued a **Circular No. HCLC. 59/2020 dated 19.01.2022** directing the Courts all over Karnataka to exclude the period from 15.03.2020 to 28.02.2022 for the purposes of limitation. According to Article 120 of the Limitation Act, L.R.s of the deceased should be brought within 90 days from the date of death of the deceased. In view of the same, the application has been filed within the limitation period. However, as per law it is very much necessary to bring on records as L.Rs. of Defendant No.1(a) and (b). The right to sue survive upon the Defendant No.1(a) and (b). It is just and necessary to bring the L.Rs. of defendant, as they are proper and necessary persons in the subject matter.

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

6. The counsel for the opponents have not filed any objections to the above I.A.s.

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

8. This suit is filed by the plaintiffs against the defendants for the relief of Partition and Separate Possession. During pendency of this suit, the defendant No.1 died. The legal heirs of defendant No.1 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 No.2 under O.22 R.4 of CPC, U/O.22 Rule 9 R/w. 151 of CPC and U/Sec.5 of Limitation Act are hereby allowed.

The legal heirs of Defendant No.1 are impleaded to this suit as Defendant No. 1(a) and (b)

For amendment and amended plaint by  
01.03.2023.

**Addl. JMFC, Karwar**