

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 No.2 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.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 plaintiffs.

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.3 has died leaving behind his wife as his legal heir. As such the Plaintiff No.2 intends to bring the following L.Rs. of D3 on record.

- (a) **Smt. Rajashree,**
W/o. Late Sri. Raju Padwalkar,
Aged about 45 years,
- (b) **Shri. Vishal,**
S/o. Late Sri. Raju Padwalkar,
Aged about 22 years,
- (c) **Shri. Vinit,**
S/o. Late Sri. Raju Padwalkar,
Aged about 21 years,
- (d) **Shri. Vivek,**
S/o. Late Sri. Raju Padwalkar,
Aged about 19 years,
All are residents of Majali, Karwar

3. This suit is filed against the defendants for the relief of Partition and Separate Possession. During pendency of the suit the defendant No.3 died on **30.04.2020** leaving behind the proposed defendant No.3(a) to (d) 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. As per law it is very much necessary to bring on record the L.Rs. of Defendant No.3. The right to sue survive upon the proposed Defendants No.3(a) to (d). It is just and necessary to bring the L.Rs. of the deceased defendant, as they are proper and necessary parties in the instant suit.

5. The Plaintiff No.2 also sought to set-aside the abatement order if any passed against the defendant No.1. He has also prayed to condone the delay if any in filing the said applications. On all these grounds, the plaintiff No.2 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.3 died. The legal heirs of defendant No.3 are the necessary parties to this suit to decide the matter effectively and the right to sue survives against the legal heirs of defendant. The Defendant No.3 died on 30.04.2020 and the application to bring his legal heirs on record was filed within the limitation period. On perusal of the records it can be seen that this Court has not passed any abatement orders. The Defendant No.3 has died during Corona Pandemic and during such period the Hon'ble High Court of Karnataka has ordered for closure of Courts. The Hon'ble High Court also issued Notification to exclude the corona period in computing limitation period.

9. 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 and are hereby allowed.

The legal heirs of Defendant No.3 are
impleaded to this suit as Defendant No. 3(a)
to (d)

For amendment and amended plaint by
01.03.2023

**Addl. Civil Judge and JMFC,
Karwar.**