

ORDER ON I.A.NO.III AND IV

1. The legal heirs of deceased original plaintiff have filed I.A.No.III under Order 22 Rule 3 and I.A.No.IV under Order 22 Rule 9 of CPC read with Section 5 of Limitation Act seeking impleading them as a legal heirs of deceased original plaintiff and setting aside abatement and condonation of delay for bringing the L.Rs of deceased original plaintiff.

2. Along with the applications, applicant No.1(a) has filed the affidavit wherein he contended that, the applicant No.1(a) to 1(c) are the children of original plaintiff. There was a miscellaneous appeal pending in the appellate court and whole file was called for in that appeal. The applicants are come on record in that miscellaneous appeal as a legal heir. It is further contended that, the applicant unaware of the court proceedings that they have to come on record in the present case also. He unaware of the court proceedings. Hence, there is a delay of 3 years in coming on record. Hence, he prayed for allowing the application. If application is not allowed, the very rights of the parties

will be defeated. If application is allowed, no prejudice will be caused to other side.

3. On the other hand, the learned counsel for defendant has resisted the application and filed a detailed objection with a contention that, the applicants have not produced any genealogy, the applicants did not file the application within stipulated time. Hence, the facts mentioned in the affidavit are false. There is an inordinate delay in bringing the legal heirs. Hence, the application cannot be allowed and prayed for rejecting the application.

4. I have heard and perused the materials available on the record.

5. The death of plaintiff is undisputed. Even it is undisputed that, the applicants have filed the I.A.No.3 and 4 to bring the L.Rs of original plaintiff after lapse of near about 3 years after the death of original plaintiff. The grievance of the defendant is that the applications have been filed after the lapse of so many years without mentioning the proper reasons for condoning the delay. Hence, application cannot be allowed. The applicants already brought on record in the miscellaneous appeal.

Hence, the applicants are the legal heirs of deceased plaintiff is not disputed. But, there is a delay in bringing the L.Rs. Hence, I am of the considered view that the said delay is to be condoned by imposing some cost on the applicants it will meet the ends of justice. If the applications are rejected only on the ground of delay, it will prejudice the applicants' case. Hence, if applications are allowed by imposing the costs, no prejudice will be caused to the other side. Therefore, on these observation, I hold that the applications are deserve to be allowed with cost of Rs.200/- each. Hence, I proceed to pass the following

ORDER

I.A.No.III under Order 22 Rule 3 and
I.A.No.IV under Order 22 Rule 9 and read with
Section 5 of Limitation Act filed by the
applicants are hereby allowed with cost of
Rs.200/- each.

Further, the L.Rs of deceased plaintiff are
brought on record.

For amendment and amended plaint
Call on 31.1.2019.

Civil Judge, Ankola

