

**ORDERS ON I.A.VII**

The advocate for the plaintiff filed the I.A.No. VII under Order 22 rule 3 of CPC seeking for to bring the applicant as legal heir of the plaintiff in this suit.

2. The application is annexed with the affidavit of the applicant, wherein he has deposed that the plaintiff is the wife of his father's elder brother. The plaintiff had executed the registered Will in his favour on 12/11/2020, thereby the applicant acquired right and title over the suit schedule property. On the basis of said Will, he is entitled to implead into this suit. Therefore, he has filed this application.

3. Contrary to this application, the learned advocate for the defendant Nos. 1 to 9, 16 to 20 and 22 has filed his serious objection and contended that the application filed under Order 23 rule 3-A of CPC is not maintainable. The cited provision of law is not applicable to the case on hand. The plaintiff died on 11/05/2021 and the necessary application to bring the LRs of the plaintiff is not filed within the prescribed period and therefore, the suit of the plaintiff is abated. Moreover, in the present application also, no prayer of setting aside of abatement is prayed. Therefore, the suit is liable to be dismissed as abated. Further, the applicant has filed this application based on

the alleged Will. But that Will is not proved before the Court and therefore, based on unproved Will, Court cannot allow the application. Hence, he prayed to dismiss the application.

4. I have heard the learned advocate for the applicant and learned advocate for the defendant Nos. 1 to 9, 16 to 20 and 22. I have also perused the application and objection and documents on record.

5. For better understanding, I have reproduced the above mentioned provision of law as follows,

**“Order 22 rule 3. Procedure in case of death of one of several plaintiffs or of sole plaintiff:—**

**(1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.**

**(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.**

6. So from perusal of the above provision of law, it appears that where any plaintiff dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff dies and the right to sue survives, then on application the legal representatives of the deceased plaintiff, Court shall permit them to proceed with the suit.

7. The applicant in her affidavit annexed to the application has clearly mentioned that the plaintiff died issue less. But, how he became legal representative of the deceased plaintiff is on the applicant to prove. However, the alleged Will is not proved yet. Therefore, based on unproved Will, this Court cannot permit the applicant to implead in this suit. Therefore, with these reasons, I pass the following order,

**ORDER**

I.A. VII filed under Order 22 rule 3 of CPC is hereby dismissed.

The main relief of the plaint is mandatory injunction and the plaintiff died on 11/05/2021 and therefore, the suit of the plaintiff is dismissed as abated.

In view of dismissal of suit as abated, the I.A.No. VI is also dismissed.