

**IN THE COURT OF Addl. CIVIL JUDGE & J.M.F.C, AT HONAVAR**

Dated on this the 9<sup>th</sup> day of March, 2021

**Original Suit No.150/2016**

**PRESENT: SMT. SANMATHI S.R.**

***BA.L.,LL.B.,LLM.,***

**Pri. Civil Judge & J.M.F.C, Honnavar**

**Plaintiffs:** Smt.Beeru W/o Jatti Naik UFM

(By Sri.VVN., Advocate)

***//Vs.//***

**Defendants:** 1.Devraj Devappa Naik UFM and others

(D-2(a) - Dead)

(D-1, 2(b), 2(f) by Sri.MNS Advocate)

(D-2(C, D, e g, m) - Exparte)

**IA.NO.VIII to X**

**Applicant:** Shankar Jatti Naik,

***//Vs.//***

**Respondents:** 1. Devraj Devappa Naik UFM and others.

**O R D E R ON IA NO.VIII to X**

Applicant has filed application/IA No.VIII U/O 22 rule 9 of CPC to set a side abatement order against legal heirs of plaintiff and to brought them on record. He filed application/I.A.No.IX under section 5 of Limitation Act seeking con-donation of delay in filing application Under order 22 rule 9 of CPC and application/I.A.No.X Under order 22 rule 4 of CPC with a prayer to set a side abatement order and to permit him to brought legal heirs of deceased Smt.Beeru W/o Jatti Naik on record.

**2.** In the accompanying affidavits filed along with IA No.VIII to X, it is stated that plaintiff died on 02-09-2019. By over sight her legal heirs by name Hanmanth Jatti Naik, Gouri W/o Madev Naik, Shankar Jatti Naik and Savita W/o Chandrashekar Naik were not brought on record within the period of limitation prescribed under law. Hence, prays to condone the delay in filing applications to set a side the abatement order against legal heirs of plaintiff and sought permission to bring legal heirs of plaintiff on record.

**3.** The counsel for the defendants submit no objection to IA No.VIII to X.

**4.** Heard on IA's.

**5.** The point that arise for consideration is:

1. Whether the plaintiff made out sufficient grounds to allow IA No.VIII to X?
2. What order?

**6.** My answer to the above point is in the affirmative for the following:-

### **REASONS**

**7. Point No.1**:- On perusal of plaint it is certain that plaintiff has filed this suit seeking partition in the suit schedule properties. Admittedly, plaintiff was necessary party to the suit. The fact of death of plaintiff is admitted by the applicant. It is certain that, applicant filed these IA's behind the period of limitation. Considering the facts and circumstances of the case, I am of the opinion that, it is not just and proper to reject the applications only because the applications are filed beyond limitation period.

**8.** Further, the delay in filing applications can be condoned by imposing suitable cost on the applicant. Because the legal heirs of plaintiff is necessary parties to the suit. If the applications are rejected

on the ground of limitation then the parties will suffer. Moreover no injustice will be caused to other side if IA's are allowed. Therefore, IA No.VIII to X filed by the applicant deserves to be allowed. Hence, Point No.1 answered in the Affirmative.

**9. Point No.2** : In view of my finding to point No. 1 in the Affirmative, I proceed to pass following:-

**ORDER**

The IA No.VIII to X filed by the Lr's of the plaintiff/applicant are allowed on cost of Rs.500/.

The applicant is permitted to come on record and brought legal heirs of deceased plaintiff on record.

To carry out the amendment within next date of hearing and furnish the amended plaint.

Call on: 07-04-2021.

(Dictated to the Stenographer directly on the computer, computerized by her, corrected and then pronounced by me in the open court on this 9<sup>th</sup> Day of March, 2021.)

Sd/-  
**(Sanmathi S.R.)**  
**C/C Addl.C.J. & J.M.F.C,Honnavar**