

**19.11.2022**

**ORDERS ON I A I TO III**

The petitioner filed I A No I to III seeking to bring legal representatives of deceased respondent no 3 on record by condoning the delay caused in filing the application and by setting aside the order of abatement.

LRs of respondent no 3 represented through counsel and counsel for opponents filed objection to the application.

Heard the counsel for the petitioners and opponents. Perused the materials on record.

The petitioners filed the present petition seeking for demarcation of their share in the properties by appointment of court commissioner. The respondent no 3 is declared to have right of share over the petition schedule properties and the opponents, being the legal representatives, are entitled to the estate of deceased respondent no 3. The opponents are stated to be the legal representatives of deceased respondent no 3. The opponents not denied the aspect of their relationship with

respondent no 3 and the main contention raised by them is that name of opponent no 3(b) is wrongly mentioned as Manod instead of Manoj. It is also contended that the delay caused in filing necessary application is not satisfactorily explained. It is contended by opponents that correct name of son of respondent no 3 is Manoj but his name is mentioned as Manod. Except said contention, the opponents not put forth any other substantive contentions. The opponents, being the legal representatives of deceased respondent no 3, are entitled to succeed to the estate of deceased respondent no 3. The petition involves demarcation and allotment of share in accordance with the terms of the preliminary decree and as such, there exists right to sue against LRs of respondent no 3. In order to adjudicate and demarcate the share in the schedule properties, the opponents need to be brought on record. The explanation provided for the delay caused in filing necessary application appear satisfactory. In the event of rejecting the application, it might lead to multiplicity of proceedings and the parties might have to face another round of litigation afresh. The contention of opponents pertaining to the wrong entry of name of opponent no 2 (b) can be set right by directing the petitioner to enter correct name of LRs of respondent no 3 while carrying out necessary

amendment. The mistake pertaining to the name of LRs of respondent no 3 can be rectified by passing suitable order in that regard. It may not be possible to adjudicate and determine the shares without bringing the opponents on record. The right and interest of the opponents might be involved in the petition with respect to the property allotted to the share of respondent no 3. The delay caused in filing the application needs to be condoned for proper adjudication of the dispute and to meet the ends of justice. Thus, the petitioner made out grounds for allowing the applications. Hence, this court deems it appropriate to pass the following:

**ORDER**

I A No I to III filed by the petitioners under S 5 of Limitation Act, Order XXII rule 9 of CPC and under Order XXII rule 4 of CPC is hereby allowed with modification.

The petitioner is permitted to bring opponents on record as the legal representatives of deceased respondent no 3 and permitted to carry out necessary amendment to that effect by mentioning the correct name of opponent no 3(b) as Manoj as provided in the objection.

Sd/-

**PRL CIVIL JUDGE, KUMTA**