

23.3.2022

The plaintiff has filed I A No IV to VI seeking to bring the opponents on record as the legal representatives of deceased defendant no 1 by condoning the delay caused in filing the necessary application and by setting aside the order of abatement. The plaintiff filed the affidavit in support of the applications wherein it is stated that defendant no is dead and the opponents are the legal representatives of deceased defendant no 1. The particulars of legal heirs of defendant no 1 could not be obtained and furnished to the counsel within time in order to file necessary application to bring them on record. The right to sue survives against the legal representatives of deceased defendant no 1 and they are necessary parties to the suit. Hence, the plaintiff sought for allowing the applications.

Notice was issued to the opponents on I A No IV to VI and they were represented through the counsel. The counsel for the opponents submitted no objection to the applications.

Counsel for the plaintiff is heard. Materials placed before the court is perused.

The plaintiff filed the present suit against the defendants seeking the relief of permanent injunction. The defendant no 1 is stated to be dead and the opponents are said to be the legal representatives of the deceased defendant no 1. It is contended by the opponents that due to not obtaining information about the legal representatives,, they were unable to file necessary application in that regard. Though the suit of the plaintiff is for the relief of permanent injunction, as the defendants have also claimed right with respect to the subject matter of the suit property, the right to sue survives against opponents being the legal representatives of deceased defendant

no 1. The suit involves determination of possessory rights with respect to suit property over which opponents appear to have right and interest. On consideration of the above stated aspects, the opponents appear to be necessary parties to the suit as the suit involves determination of not only possessory right of the plaintiff but also the right of defendants. The explanation provided by plaintiff for the delay in preferring the application, appears reasonable and satisfactory. Further, the cause of action appears to subsist in favour of the plaintiff as against the legal representatives of deceased defendant no 1. If the opponents are not brought on record they may be forced to enter another round of litigation afresh. The plaintiff made out grounds to allow the applications. There appears delay in filing necessary applications and the same cannot be considered as a sole ground to reject the applications when the explanation appears satisfactory. The suit involves determination and adjudication possessory right and

interest of the parties and as such, there exists right to sue against the opponents. In order to completely and effectively adjudicate right of the parties, the opponents need to be brought on record. Thus, the plaintiff has made out grounds for allowing the applications. Hence, this court deems it appropriate to pass the following

ORDER

I A IV to VI filed by the plaintiff under Order XXII rule 9 of CPC, Order XXII rule 4 of CPC R/w S. 5 of Limitation Act and Order XXII rule 4 of CPC are hereby allowed.

The plaintiff is permitted to bring on record, the legal representatives of deceased defendant no 1 and is permitted to carry out necessary amendment to that effect.

Sd/-

C/c Addl. CIVIL JUDGE, KUMTA

