

IN THE COURT OF CIVIL JUDGE, MUNDGOD.

PRESENT

SRI. IRANAGOUDA K. KABBUR,

B.A., LL.B., (Hon's) LL.M.

Civil Judge, Mundgod.

O.S. No.11/2018

Dated this the 20th day of December 2018.

PLAINTIFF:

Shivalingayya Sangayya Hiremat,
A/a.69 years, Agriculturist,
R/o. Katur, Tq: Mundgod, U.K.

(By Sri. R.N.Hegde, Advocate)

- Vs -

DEFENDANT:

Kumarswamy Adopted father
Rudrayya Hiremat, a/a. 48 years,
Agriculturist, R/o. Katur,
Tq: Mundgod, U.K.

(By Sri. C.S.Ganiger, Advocate)

PARTIES IN I.A.NO.III

APPLICANTS:

1. Smt. Sharada Kom. Shivalingayya Hiremat, A/a.62 years, Household, R/o. Katur, Tq: Mundgod, U.K.
2. Kumar S/o. Shivalingayya Hiremat, A/a.46 years, Pvt.Job, R/o. Katur, Tq: Mundgod, U.K.
3. Smt.Umadevi Kom.Rajashekhharayya Hiremat, A/a.51 years, Household, R/o. Katur, Tq: Mundgod, U.K.

4. Smt.Kavita Kom.Kumarswamy
Hiremat, Aged about 42 years,
Household, R/o. Katur,
Tq: Mundgod, U.K.
5. Shivayya S/o. Shivalingayya
Hiremat, Aged about 40 years,
Agriculturist, R/o. Katur,
Tq: Mundgod, U.K.

- Vs -

RESPONDENT:

Kumarswamy Adopted father
Rudrayya Hiremat, a/a. 48 years,
Agriculturist, R/o. Katur,
Tq: Mundgod, U.K.

ORDER ON I.A.NO.III

The applicants have filed this application under Order XXII Rule 3 R/w. Section 151 of C.P.C. to bring the legal representatives of plaintiff No.1 on record. In the annexed affidavit to the application, it is submitted that during the pendancy of the suit the original plaintiff died on 9-7-2018 leaving behind his wife, sons and daughters as his legal representatives. It is also submitted that it is necessary to make them as a parties to the suit for the proper adjudication of the case. If the I.A. is allowed no

hardship will be caused to other side. Hence, prayed to allow the interim application.

2. Per contra, defendant filed the objection submitting that, the application filed by the plaintiffs is false and vexatious and is not tenable in the eyes of law. Therefore the version of the plaintiff cannot be believed and the application filed by the plaintiff needs to be rejected with cost.

3. Heard both the counsel and perusal the documents available before the court. After hearing the questions that arise for considered are:-

1. Whether the applicants have made out a sufficient grounds to allow the I.A.No.III filed under Order XXII Rule 3 of C.P.C.?
2. What Order?
4. My findings on the above points are as follows:

Point No.1: In the '**Affirmative**'.
Point No.2: As per the final order for the following.

REASONS

5. **Point No. 1** : This suit is instituted by the plaintiff against defendant for the relief of injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the suit schedule property. The suit of plaintiff is objected by the defendant by filing the written statement and now the suit is pending for trial. During the pendency of the trail, the applicants have filed the application and submitted that the original plaintiff died during the pendency of this case leaving behind the legal representatives of him who are proposed applicants No.1 to 5. Therefore, the proposed legal representatives of deceased plaintiff are to be brought on record in the place of deceased plaintiff. Hence prayed to allow the interim application.

6. The counsel for the defendant filed the objection submitting that, the application filed by the applicants is false and vexatious and is not tenable in the eyes of Law.

The suit for injunction after the death of the plaintiff the suit does not survive for consideration as the rights sought by the plaintiff is personal in nature and does not continue after his death. The only remedy left to the plaintiff is to file the separate suit if it is necessary to them. The applicants knowing the above fact had filed the false application. Therefore, prayed to reject the application.

7. After hearing the both the counsel and going through the I.A. objection and pleadings the question involved in the application is whether bringing the legal representatives of plaintiff are necessary for proper adjudication of the case. By going through the submission of both counsels, it is clear that if the legal representatives of the plaintiff are brought on record it does not change the nature of the suit nor cause of action of suit. The legal right and cause of action accrued to the plaintiff is continued through his legal representatives and does not get diminish. Such being the case, it is necessary to adjudicate the rights of each and every party who are

interest over the suit property. If such a right is not provided to the plaintiff, it may cause inconvenience and hardship and result of which does not serve any purpose. Therefore, it is very much necessary to bring legal representatives of deceased plaintiff on record for proper adjudication of the case & to avoid the multiplicity of the proceedings.

8. Therefore, in light of above discussion and settled principle law that it is clear that, bringing the legal representatives of the deceased plaintiff on record to the plaintiff is proper and necessary to the suit. Accordingly my finding to the above point No.1 answered in the **'Affirmative'**.

9. **Point No.2:-** For the aforesaid reasons, I proceed to pass the following:

:: O R D E R ::

The I.A.No.III filed by the applicants under Order XXII Rule 3 of C.P.C., is hereby allowed.

The legal representatives of deceased plaintiff are hereby brought on record in the place of deceased plaintiff as prayed in I.A.No.III.

Learned counsel for the plaintiff is hereby directed to carry out amendment in the plaint and also directed to file amended plaint within 7 days from the date of this order.

No order as to cost.

(Dictated to the stenographer directly on the computer, corrected by me and then pronounced in the open court this the 20th day of December 2018)

(IRANAGOUDA K. KABBUR)
Civil Judge, Mundgod.

