

**Common order on I.A.No.XIV filed under Sec.5 of the
Limitation Act, 1964, I.A.No.XV filed under Order XXII Rule 4
of C.P.C. and I.A.No.XVI filed under Order XXII Rule 9 of
C.P.C.**

These applications are filed by the plaintiffs under Order XXII Rule 4 of C.P.C. to implead the legal heirs of defendant No.1(a) to (c) in the place of deceased defendant No.1 since he died on 30.03.2021 and defendant No.1(a) to (c) are the legal heirs of defendant No.1. Therefore, the application is filed under Order XXII Rule 4 of C.P.C. and also application is filed under Order XXII Rule 9 of C.P.C. to set aside the abatement of the suit caused on the death of defendant No.1 and it is the contention of the plaintiff No.5 that the 1st defendant died on 30.03.2021, but it was informed to them off-late and due to Nationwide lock down they could not take steps against the legal heirs of defendant No.1, therefore, there is a delay which is neither deliberate nor intentional and further according to him, the Hon'ble Apex Court of India has extended limitation for all practical purpose, therefore, the order of abatement may be set aside and they have also filed application under Sec.5 of Limitation Act to condone the delay if any in filing these applications, accordingly, prayed to allow the I.A.No.XIV to XVI and permit the legal heirs of deceased defendant No.1 to come on record and to represent the deceased defendant No.1. Though the I.A.No.XIV to XVI have been filed to bring legal heirs of defendant No.1 in his place, but, it is not objected by the legal heirs of defendant No.1, therefore, it appears that in order to determine the real issue between the parties, the legal heirs of defendant No.1

also necessary, since cause of action after death of defendant No.1 survives to his legal heirs since it is a suit filed for the relief of partition for division of plaint 'A' schedule properties into 36 equal shares with reference to good and bad soil and directing the defendant No.11 to render account of the income realized from the plaint schedule properties for the past three years immediately preceding to filing of the suit. Though copies of I.A.No.XIV to XVI have been served on the legal heirs of defendant No.1, but they did not file any objection to these applications, in view of the reason, it appears that legal heirs of defendant No.1 to be permitted to step into shoes of deceased defendant No.1, accordingly, there is no ground made out to dismiss the I.A.No.XIV to XVI, hence these applications are allowed in the interest of justice and equity. Accordingly, I proceed to pass the following :

ORDER

The I.A.No.XIV to XVI filed by the plaintiffs to bring the legal heirs of defendant No.1 are hereby allowed.

Further, it is requested the plaintiffs to carryout the necessary amendment and shall furnish amended plaint by 09.09.2022.

(Natesha R.)

Addl. Senior Civil Judge & A.C.J.M.,
Udupi.

