

ORDER ON IA. No.VII

The Applicant/plaintiff has filed IA No. VII under order XXII Rule 4(1) and Sec. 151 of C.P.C. along with an accompanying affidavit of plaintiff, praying to permit the applicant/plaintiff to implead the legal representatives/opponents of the deceased defendant No.1 as defendant No.1(a) to 1(e) and to carry out the consequential amendment in the plaint.

2. The reasons stated in the affidavit annexed to the application that defendant No.1 has passed away on 16.12.2022 as per information furnished to the plaintiff by defendant No.2. The proposed defendant No.1(a) to (e) are the legal representatives of the defendant No.1 and may be substituted in the place of deceased defendant No.1. One more legal heir of defendant No.1 is already on record as defendant No.5. The application is within time. Therefore prayed to allow the application.

3. The said IA notice was issued to the proposed defendant No.1(a) to (e), it was duly served on 1(a) and (b) and through affixture the notice was duly served on 1(c) to (e). The defendant No.1(a) and (b) appeared before this court through their counsel and submitted that they do not have any objection to IA No.VII , however the defendant No. 1(c) to (e) did not appeared before this court and remained absent.

4. Heard the counsel for the plaintiff, perused the application and affidavit annexed there with and other materials brought on record.

5. After going through the application with affidavit the points arise for my consideration are:

1. Whether the application filed by the plaintiff under Order XXII Rule 4(1) and Sec. 151 of C.P.C. deserve to be allowed?
2. What order?

6. My answer to the above said points are as under:

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

REASONS

7. **Point No.1:** The suit is filed for the relief of declaration and permanent injunction.

8. During the pendency of this suit counsel for plaintiff has filed this application stating that defendant No.1 passed away on 16.12.2022.

9. As per Order XXII Rule 4, if sole defendant dies and right to suit survives then the court on an application made in that behalf shall cause the legal representatives of the deceased defendant to be made a party and shall proceed

with the suit. Further defendant No.5 being the legal heir of defendant No.1 is already on record. Based on the above said provision it is necessary to bring the legal heirs of the defendant No.1 on record in order to proceed with the case. Accordingly, I answer point No.1 in the **Affirmative**.

10. **Point No.2:** In view of aforesaid discussion and the findings arrived at point No.1, I proceed to pass the following:

ORDER

I. A. No.VII filed by the applicant/ plaintiff under order XXII rule 4(1) and Sec. 151 of C.P.C. is hereby allowed.

The opponents are impleaded and are brought on record as legal representatives of defendant No. 1(a) to 1(e). The plaintiff is directed to carry out the necessary amendment and file amended plaint by 21.04.2025.

Addl. Civil Judge & J.M.F.C.
Karkala.