

## **ORDER ON I.A. No.IV to VII**

Applicants/plaintiffs have filed I.A.No.IV under Order XXII Rule 3 CPC to implead the party detailed in the application as the plaintiff No.3 (a) in the suit as the legal heir of the deceased 3<sup>rd</sup> plaintiff and for other orders and I.A.No.V under Order XXII Rule 9(3) CPC to condone the delay in filing the application for setting aside abatement of the suit as against the deceased 3<sup>rd</sup> plaintiff and for other orders and I.A.No.VI under Order XXII RULE 9 of CPC to set aside the abatement of the suit as against the deceased 3<sup>rd</sup> plaintiff and for other orders.

2. Applicants/plaintiffs have filed I.A.No.VII under Order VI Rule 17 of CPC to grant permission to the applicants to amend the plaint as detailed in the application.

3. Husband of the applicant No.1 has sworn to affidavits annexed to the applications and stated that the 3<sup>rd</sup> plaintiff died two years ago leaving behind his daughter as his only legal heir. Cause of action for the suit in respect of the deceased 3<sup>rd</sup> plaintiff survived upon the said legal heir. Hence she is a necessary party to the suit and required to be impleaded.

4. The deponent further stated that the applicants were not aware of the requirement of the impleading of the legal heirs in view of the presence of other continuing plaintiffs. They came to know of necessity of impleading the legal heir of the deceased 3<sup>rd</sup> plaintiff only when, the applicants met their advocates to report the death of the 3<sup>rd</sup> defendant and their advocate told them that the legal heir of the 3<sup>rd</sup> plaintiff should be brought on record. It is stated that due to the ignorance of the applicants they could not file necessary applications to implead the legal heir.

5. The deponent further stated that the delay in filing the necessary applications is un-intentional and beyond their control and if the applications are allowed no prejudice will be caused to the defendants. The 3<sup>rd</sup> defendant died on 22-09-2012 and applicants were not aware of the said death until recently when the same is reported to the Court by the rest of the defendants and it is stated that the 3<sup>rd</sup> defendant has not left behind any legal heirs and said aspect has to be mentioned in the plaint by means of amendment of the plaint. Therefore the applicants prayed to allow the applications.

6. Opponents/defendants have filed counter statement to I.A. No.7 only and did not file objections to other applications. It is submitted that the deponent has no locus standi to file affidavit as he is not the plaintiff and he has no authority to represent the plaintiffs. It is further submitted that the applicants have not produced the death certificate of 3<sup>rd</sup> plaintiff and have not stated the date of death of the 3<sup>rd</sup> plaintiff.

7. Opponent has further submitted that 3<sup>rd</sup> defendant was residing with his kith and kin and after his death the said persons have inherited the property of 3<sup>rd</sup> defendant. In addition to this the opponent has denied all the other averments made in the affidavits and prayed to dismiss the applications with costs.

8. Heard

9. Plaintiffs have instituted the suit for permanent injunction against defendants restraining them from entering upon or trespassing into the suit 'C' and 'D' schedule lands or in any other manner from disturbing the peaceful possession and enjoyment of the said lands by the plaintiffs and for costs and other relief.

10. In the case on hand 3<sup>rd</sup> plaintiff is reported to be dead about two years ago. But the exact date of death is not stated before the Court. As per the provisions of Limitation Act legal heirs of a deceased party to the suit have to be brought on record within 90 days from the date of death or within 150 days from the date of death by filing an application for setting aside an order of abatement if any. But in the present case the aforesaid applications have been filed after lapse of two years from the date of death of plaintiff No.3 as contended by the applicants.

11. Opponents inspite of giving sufficient opportunities to them have not filed objections to I.A. IV to VI. Such being the case when the suit is for bare injunction only and after the death of plaintiff cause of action survives upon his legal representative, it is necessary to implead legal heir of deceased 3<sup>rd</sup> plaintiff on record. Though there is an inordinate delay, applicants have contended that due to ignorance they could not file the applications for impleading the legal heirs. However ignorance of law is no excuse. But the Rules of procedure are intended to be a handmaid to the administration

of justice. A party cannot be refused relief merely because of some mistake, negligence or inadvertence of rules of procedure. Therefore by allowing the said applications no inconvenience will be caused to the opponents.

12. As regards I.A. No. VII is concerned, opponents have filed counter statement and stated that deponent is not a competent person to swear to an affidavit on behalf of the applicants. However deponent is the husband of applicant No.1. To depose on behalf of his/her spouse authority is not required. Such being the case it cannot be said that deponent has no locus standi to swear to an affidavit on behalf of the applicants.

13. On behalf of the opponents it is submitted that deceased 3<sup>rd</sup> defendant had kith and kin. But in a suit for bare injunction after the death of the defendant the suit as against the defendant abates. Therefore if there are legal heirs of the deceased defendant, in a suit for mere injunction, after the death of the defendant, they need not made as parties to the suit.

14. I.A.No.VII is filed for amendment of the plaint which is consequential to the impleadment of the legal heir of the deceased 3<sup>rd</sup> plaintiff. Such being the case the said

amendment application has to be allowed. Therefore the following:

**ORDER**

I.A.No.IV filed under Order XXII Rule 3 CPC,  
I.A.No.V filed under Order XXII Rule 9(3) CPC,  
I.A.No.VI filed under Order XXII RULE 9 of CPC and  
I.A.No.VII filed under Order VI RULE 17 of CPC by  
applicants/plaintiffs are allowed.

The person detailed in I.A. No.IV is impleaded as  
plaintiff No. 3 (a) by setting aside the abatement of the suit  
as against the deceased 3<sup>rd</sup> plaintiff by condoning the delay  
in setting aside the abatement.

Applicants/plaintiffs are permitted to carry out  
amendment to the plaint.

**Principal Civil Judge & J.M.F.C.**  
Kundapura