

Orders on IA No. 28

The applicants have filed this application Under Order XXII Rule 3 R/w Section 151 of CPC to implead them as supplemental plaintiff No. 1 and 2/Legal representatives of the deceased plaintiff.

2. It is stated in the affidavit that the original plaintiff in the suit is his father and he filed above suit seeking partition of suit 'A' schedule property. This Court by its judgment and decree dated 24-02-2019 have dismissed the said suit on the ground that one Lawrence Almeida, the brother of the defendant No. 5 was not impleaded in the suit. Being aggrieved with the said judgment of this Court his father filed an appeal before the Senior Civil Judge Court in RA No. 27/2019. During the pendency of above appeal his father Mr. Anthony Lazarus died intestate leaving behind the applicants as his legal heirs. The applicants being the children of Anthony Lazarus have acquired right over the suit 'A' schedule property by inheritance. He got filed an application in the above appeal and impleaded as legal heir of his late father and prosecute the said appeal. The appellant Court after hearing the said appeal on merits by its judgment and decree dated 20-02-2024 was allow the said appeal and remanded back the suit to this Court with a direction to implead the necessary party in the suit. He and 2nd applicant are need to be impleaded as legal heirs of deceased plaintiff in the above suit. The another son of his father viz: his brother Ajay Lazarus has been residing in abroad in connection with his occupation. Therefore he cannot be impleaded as

plaintiff in the above suit. There are no conflict of interest in between him and 2nd applicant and above named Ajaya Lazarus. Him and 2nd applicant being legal heirs of their father viz: original plaintiff acquired right, title and interest over the suit property right to sue in the suit survive on him and 2nd applicant also and as such they may be impleaded as supplemental plaintiffs in the suit and they are the just and necessary parties to the above suit. Hence prays to allow the application.

3. The defendant No. 3 has filed an objection stating that the plaintiff Anthony Lazarus died on 19-05-2020, leaving behind his children Ajay Lazarus, Ashmitha Lazarus and Avinash Lazarus as his sole legal representatives. As such the suit stood abated on 18-08-2020. No application is filed by the applicants, to set-aside the abatement of the suit, and no application is filed to condone the delay in filing the present application. Without there being any application for setting aside the abatement, and for condoning the delay, the applicants are not entitled to come on record in the above suit. The present application is filed only by the two legal representatives of the deceased. Ajay Lazarus, who also in the legal representative of the deceased has not chosen to come on record in the above suit. As such the present application is incomplete and incompetent. Therefore the application deserves to be dismissed in limine. If one of the legal representatives is left out and if the suit

were to proceed in his absence, there is every likelihood of the left out legal representatives, challenging the judgment to be passed in the above suit, in case the judgment goes against his interest. Therefore it is necessary to direct the applicants to make him a party to the suit, either as co-plaintiff or as co-defendant. Hence prays to dismiss the application.

4. Heard both side and perused the materials on record.

5. The points that would arise for my consideration are as under:

//POINTS//

1) Whether the applicant has made out the grounds to allow the application ?

6. My answer to the above point is in the **AFFIRMATIVE** for the following:

// REASONS //

7. The plaintiff has filed this suit against the defendants for the relief of partition and the said suit was dismissed on 22-04-2019. Against the said judgment and decree the plaintiff preferred an appeal in RA No. 27/2019. In the said appeal the judgment of this Court was set aside and remanded the matter with a direction to provide an opportunity to the plaintiff to implead necessary parties as observed in its judgment at para No. 41. The applicants being the

legal heirs of deceased plaintiff filed this application to implead them in this suit. In the application they have stated that their father had 3 children namely Avinash Lazarus, Mrs Asmitha Lazarus and Ajay Lazarus. Their brother Ajay Lazarus is residing in abroad, as such he cannot be impleaded and there are no conflict of interest in between the applicant and their brother Ajay Lazarus.

8. Since the suit is partition all the legal heirs of deceased plaintiff are necessary parties. His right is also involved in this suit. The matter was remanded in the appeal in order to implead the necessary parties. Therefore in the absence of the necessary parties the Court cannot proceed further. But the application cannot be rejected only for the reason that the brother of the applicants was not chosen to come on record. The burden on the part of applicants that to implead all the necessary parties by taking necessary steps after coming on record. Therefore the application needs to be allowed in the interest of justice. Accordingly, I proceed to pass the following:

ORDER

The IA No. 28 filed by the applicant Under Order 22 Rule 3 R/w Section 151 of CPC, is hereby allowed.

**For amendment and amended
plaint.**

Call on 12-08-2024.

II Addl. Civil Judge and J.M.F.C.,
Kundapura