

ORDER ON IA No.9

Plaintiff has filed this IA No.9 U/O 22 Rule 4) CPC praying to implead LR.s of defendant No.4 on account of death of D4.

Plaintiffs has filed IA praying to permit the plaintiff to implead LR.s of defendant No.4 as defendant No.4 died on 14.12.2020 and plaintiff was unaware of this fact and plaintiff further contended that if this application is not allowed plaintiff will be put up substantial hardship and prayed to allow this IA.

On the other hand notice to respondents of IA.9 has been served but they remained absent on 18.08.2023 Accordingly the objection to IA No.9 by its respondents taken as not filed.

Considering the IA.9 and material available on record the following points arise for my consideration.

POINTS

1. Whether the plaintiff made out grounds to allow this application?
2. What order ?

On considering the facts and arguments of both the counsels

I answer the above points as under.

Point No.1 In the affirmative.

Point No.2 As per the final order for the following

REASONS

This is suit filed by plaintiffs against the defendant for the relief of partition and separate possession in respect of suit schedule property contending that suit schedule properties are their ancestral properties. The plaintiff in the plaint contended that, D4 is the son of Bheemappa and Mallavva and brother of D1 to 3, 5 to 7 and plaintiff is the son of Avvanna and Guravva and suit schedule property was held by propositus Vittappa who had 3 children Bheemappa, Avvanna and Shivalingappa. D4 is the son of Bheemappa. Plaintiff is the son of Avvanna. D21 and 22 are the grand children of Shivalingappa. D23 is daughter of Shivalingappa.

This suit was filed on 25.02.2014 and D1 to 7 have appeared through their counsel and case was set for plaintiff evidence on 14.11.2017 the same stage continued till 09.08.2018 and case again set for cross of PW1 on 10.10.2018 on 09.01.2019 the case was posted for further plaintiff evidence and the same stage continued till 03.02.2020 on that day plaintiff examined 2 witnesses as PW2 and 3 and completed his evidence on 04.03.2023 then case posted for evidence of defendant and on 11.02.2021 counsel for the D1 to 7 filed memo reporting the death of D4 on 25.02.2021 plaintiff filed this application. Admittedly this is suit filed by the plaintiff for the relief of partition and separate possession and suit against the D4 survives against his legal heirs and as per the IA No.9 respondent in the IA No.9 are the children of D4. Article 120 of Limitation act 1963 mandates that, within 90 days of the death of defendant. Plaintiff has to file the application for impleading the legal representative of the deceased defendant. Plaintiff has filed this application on 25.02.2021 and

defendant No.4 died on 14.12.2022. i.e., after 73 days i.e., well within 90 days. As the respondents to IA No.9 have not filed any objection to the IA No.9. The contention taken by the plaintiff in IA No.9 remained unquestioned. And cause shown by the plaintiff is sufficient for allowing the application. Hence I Answer point No.1 in the affirmative.

Point No.2 IA No.9 filed U/o 22 Rule 4 of CPC is hereby allowed. Plaintiff is hereby permitted to implead the of the defendant No.4 as D4 (a) to (d).

For amended plaint

Call on 22.09.2023

Addl. Civil Judge & J.M.F.C.,
Sindagi