

Common Order below Exh. 126 to 128 in R.C.S. No. 73/2015

By virtue of these applications, the owner of attorney of counter claimant plaintiff is hereby seeking to condone the delay, set aside the abatement and bring legal representative of Sadashiv Shivram Thukrul on record. According to the power of attorney of counter claimant plaintiff, Sadashiv Shivram Thukrul died on 02/10/2018. The parties are not having sufficient knowledge in respect of civil proceeding. Hence, the delay is caused for bringing the legal representative of Sadashiv Shivram Thukrul on record and accordingly, suit was abated. Hence, prayed to allow these applications.

2. Per contra, the original plaintiff has resisted this application by filing his say (Exh.136). Heard the learned Adv. Shri. M. S. Kale. He has submitted that the present counter claim is filed in respect of perpetual and mandatory injunction. Therefore, cause of action is important for the present relief. According to him, after demise of the counter claimant plaintiff cause of action in respect of counter claim automatically terminated. Therefore, present application deserves to be rejected. On this count he has referred the matter of **Shankaralingappa V/s Nanje Gowda AIR 1981 Kar. 78**

3. Heard both parties at length, perused say filed by both the parties. The power of attorney of counter claimant plaintiff is hereby seeking to bring on record legal representative, as plaintiff died on 02/10/2018. According to order 22 Rule 3 of the code of civil procedure, *(1) where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone,*

or sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the court on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit. Perused the counter claim filed by plaintiff Sadashiv Shivram Thukarul. He has filed the counter claim for perpetual and mandatory injunction. He is sole plaintiff in the counter claim. In such circumstances, it appears that legal representative of deceased Sadashiv Shivram Thukarul is required to be bring on record.

4. As far as the authority relied by the original plaintiff **Shankaralingappa (Supra)** is concerned. In this valuable authority the Hon'ble Karnataka high Court framed the following point and observed that

“Whether a decree for permnant injunction against the transferor would operate as resjudicata against his transferee who is not party to the previous suit? - No.”

“It is difficult to hold that possession of person safeguarded by a decree of permanent injunction in favour of one would enure to the benefit of another person and bind any other person other than the original judgment debtor or his legal representative. A judgment in suit for injunction is not a judgment in rem and binds only parties to the suit.”

5. The valuable authority relied by the original plaintiff is not helpful to him for the reason that in above authority the parties have already obtained judgment in suit for perpetual injunction. In the present matter in hand, the suit and counter claim is pending and during pendancy the counter claimant plaintiff Sadashiv Shivram Thukarul died. Therefore, it appears that the counter claim is

survives upon his legal representative. Hence, they are required to be bring on record. However, delay is caused for bringing the legal representative on record. Therefore, sufficient costs required to be imposed. Hence, the following order

ORDER

1. The applications at Exh. 126 to 128 are allowed subject to costs of Rs.500/-.
2. After payment of costs legal representative be brings on counter claim.

Deogad
Date : 26/03/20201

Sd/-
(B.R.Patil)
Civil Judge J.D. Deogad.