

KABG010056502020



**IN THE COURT OF PRL. DISTRICT JUDGE AND COMMERCIAL
COURT, AT, BELAGAVI**

DATED THIS THE 14th DAY OF JANUARY 2026

PRESENT : SHRI MANJUNATH NAYAK
B.A.L. LL.B.
Prl. District & Sessions Judge
Belagavi.

Commercial O. S. No.71/2020

PLAINTIFF: M/S MANDAVI BIO-TECH,
A Proprietary Concern having its
Registered Office at
Flat No.101, CTS No.5988,
Hari Krupa Apartment,
Mahatma Gandhi Colony, Tilakwadi,
Belagavi, Represented by its
Proprietor, Sri Ravi S/o Rujay Mascaren,
Age: 43 years, Occupation: Business,
R/o Flat No.101, CTS No.5988,
Hari Krupa Apartment,
Mahatma Gandhi Colony,
Tilakwadi, Belagavi.

(By Sri S.G. Ganachari, Advocate)

Vs.

DEFENDANTS: 1. M/S SHREE ASHTAVINAYAK FERTILIZER
A proprietary Concern having
its place of business at
Shop Nos.56-57-58, Near Maratha Bank,
A.P.M.C. Market Yard, Kangrali (K.H.),
Belagavi, Taluk & District: Belagavi
Now represented by the

defendants No.2 to 6, the legal heirs of deceased proprietor namely Sri Vinayak S/o Dhaklu Yelve (Yalave).

2. Sri Dhaklu S/o Jyotiba Yalve (Yalave),
Age: 62 years, Occupation: Business,
R/o C/o Smt. Ashwini Ravindra Redekar,
H.No.29/C, Ramnagar, 2nd Cross, Kangrali (KH),
A.P.M.C. Yard, Taluk & District: Belagavi.
3. Smt. Anjana W/o Dhaklu Yalve (Yalave),
Age: 56 years, Occupation: Business,
R/o C/o Smt. Ashwini Ravindra Redekar,
H.No.29/C, Ramnagar, 2nd Cross, Kangrali (KH),
A.P.M.C. Yard, Taluk & District: Belagavi.
4. Smt. Dhanashri W/o Vinayak Yalve (Yalave),
Age: 34 years, Occupation: Business,
R/o C/o Bailesi Ramchandra Kouljigouda,
Gokak Road, At & Post: Muchandi,
Taluk & District: Belagavi.
5. Kumari Samruddhi D/o Vinayak Yalve (Yalave),
Age: 09 years, Occupation: Student,
R/o C/o Bailesi Ramchandra Kouljigouda,
Gokak Road, At & Post: Muchandi,
Taluk & District: Belagavi.
6. Kumari Swara D/o Vinayak Yalve (Yalave),
Age: 07 years, Occupation: Student,
R/o C/o Bailesi Ramchandra Kouljigouda,
Gokak Road, At & Post: Muchandi,
Taluk & District: Belagavi.
Defendant No.5 and 6 minors represented by
their natural guardian mother and next friend
Smt. Dhanashri W/o Vinayak Yalve (Yalave),
Age: 34 years, Occupation: Business,
R/o C/o Bailesi Ramchandra Kouljigouda,
Gokak Road, At & Post: Muchandi,
Taluk & District: Belagavi.

(D1 is a firm)

(D2 & 3 by Sri G.G. Patil, Advocate)

(D4 to 6 Ex parte)

COMMON PARTIES TO THE IA NO.IV to VI**PLAINTIFF/****APPLICANT :**

M/S MANDAVI BIO-TECH,
Represented by its Proprietor

Vs.

PROPOSED DEFENDANT**No.2(1) to 2(3)****/OPPONENTS:**

2. Sri Dhaklu S/o Jyotiba Yalve (Yalave),
Since deceased by his legal heirs
- 2(1) Smt. Archana D/o Dhaklu Yalve (Yalave),
Age: 48 years, Occupation: Household,
R/o Shivaji Galli, Near Post Office,
Kangrali (KH), Taluk & District: Belagavi.
- 2(2) Smt. Ashwini W/o Ravindra Redekar,
Age: 45 years, Occupation: Household,
R/o H.No.29/C, Ramnagar, 2nd Cross,
Kangrali (KH), A.P.M.C. Yard,
Taluk & District: Belagavi.
- 2(3) Sri Vishal S/o Dhaklu Yalve (Yalave),
Age: 38 years, Occupation: Household,
R/o Shivaji Galli, Near Post Office,
Kangrali (KH), Taluk & District: Belagavi.

(By Sri G.G. Patil, Advocate)

<i>i.</i>	Provision under which the applications are filed	U/Order XXII Rule 4 read with Section 151 of CPC, U/Order XXII Rule 9 read with Section 151 of CPC U/Section 5 of Limitation Act
<i>ii.</i>	Relief sought for	To bring legal heirs of deceased defendant No.2 on record, To set aside abatement and

		To condone the delay in filing the said applications
<i>iii.</i>	The date on which the applications are filed	29.04.2025
<i>iv.</i>	Number of the applications	I.A. No.IV, V and VI
<i>v.</i>	The date on which the objections are filed by different opponents/ proposed defendant No.2(1) to 2(3)	31.07.2025
<i>vi.</i>	The date on which the orders were passed on the said applications	14.01.2026

ORDERS ON IA NO.IV to VI

The plaintiff has filed IA No.IV under Order XXII Rule 4 read with Section 151 of Code of Civil Procedure (in short 'CPC') to bring the legal heirs of deceased defendant No.2 on record, IA No.V under Order XXII Rule 9 read Section 151 of CPC to set aside the abatement and IA No.VI under Section 5 of Limitation Act to condone the delay in filing the application to bring the legal heirs of defendant No.2 on record. As all these applications are inter connected to each other, I have taken these applications together for disposal through this common order.

2. In supporting affidavit, the plaintiff contended that they filed this suit for claiming the decree for recovery of Rs.18,03,292/-. The defendant No.2 died on 18.12.2024, leaving behind his wife defendant No.3 and two sons and two daughters. The legal heirs of deceased son are already on record as defendants No.4 to 6. Now the daughter of

defendant No.2 and another son have to be brought on record. The cause of action survives against all the legal heirs of defendant No.2. If the delay is not condoned and abatement is not set aside, plaintiff will be put to loss and hardship. On all these grounds, plaintiff prayed to allow these applications and permit the plaintiff to bring legal heirs of defendant No.2 on record by condoning the delay and setting aside the abatement.

3. The legal heirs of defendant No.2 appeared before this Court through their counsel and filed objections to these applications and contended that the applications are not maintainable in law or on facts. The alleged suit transaction is between the plaintiff and the defendant No.1, which is a Proprietary concern. Due to the death of the proprietor, said concern has come to an end. The defendant No.2 and 3 cannot become legal heirs of defendant No.1 firm to prosecute them. The legal heirs of defendant No.2 are also not liable for the claim made by the plaintiff. Hence, they need not be impleaded as parties to this suit. On these grounds, legal heirs of defendant No.2 prayed for dismissal of the applications with costs.

4. I have heard the arguments of both the parties.

5. The point that arises for my consideration is:

**“Whether the cause of action survives
against the legal heirs of defendant
No.2 to come on record?”**

6. My answer for the above point is **in the Negative**, because of my below discussed reasons:

REASONS

7. The plaintiff firm has filed the present suit claiming the decree for recovery of Rs.18,03,292/- from the defendants with interest at the rate of 18% p.a. The defendant No.2 to 5 appeared before this Court through their counsel and filed the written statement. During the pendency of the suit, defendant No.2 reported as dead. Thereafter, the plaintiff has filed the present applications to bring the legal heirs of defendant No.2 on record as the defendant No.2(1) to 2(3) by condoning the delay and setting aside the abatement. According to the plaintiff, wife of defendant No.2 is already on record as defendant No.3 and the legal heirs of one of the son of defendant No.2 are also on record as defendant No.4 to 6. The proposed defendants are the daughters and another son of defendant No.2 and they are to be brought on record.

8. The main objection of the proposed defendant No.2(1) to 2(3) is that the plaintiff has filed this suit to recover the amount due from

the defendant No.1, which is Proprietorship concern, owned by Sri Vinayak Dhaklu Yalave. According to the proposed defendant No.2(1) to 2(3), they are not the Class-I legal heirs of proprietor of defendant No.1 firm and not inherited and acquired any properties and estate from the deceased sole proprietor. Therefore, no cause of action survives against them to implead them in the present suit and they cannot be brought on record.

9. In support of this arguments, learned counsel for proposed defendant No.2(1) to 2(3) has relied upon the decision of Hon'ble Supreme Court reported in **AIR 2024 Supreme Court 1386 (Vinayak Purshottam Dube (Deceased) Through Lrs vs. Jayashree Padamkar Bhat and others)**. As per the ratio laid down in the above decision, a proprietorship firm is not a separate legal entity, as compared to the proprietor and his estate would become liable only to satisfy a decree or an order in monetary terms on his demise. It was further held in the said decision that the 'Legal representative' means a person who in law represents estate of deceased person, and includes any person who intermeddle with estate of deceased and where a party sues or is sued in a representative character, person on whom estate devolves on death of party so suing or sued. Thus, legal representatives of a deceased are

liable only to the extent of estate, which they inherit. The ratio laid down in the above decision is quite clear that in case of monetary transaction and recovery of money due from proprietorship concern, the legal representatives are liable only to the extent of estate, which they inherit and not personally liable.

10. On the other hand, in support of his arguments, learned counsel for plaintiff has relied upon the judgment of Hon'ble Supreme Court reported in **AIR 1999 Supreme Court 1484 (Ashok Transport Agency vs. Awadhesh Kumar)**. Again the ratio laid down in the above decision is very clear that in the event of death of proprietor of proprietary concern, it is the legal representatives of the proprietor, who alone can sue or be sued in respect of the dealings of the proprietary business.

11. In the case on hand, if I draw my attention to the plaint averments, plaintiff admits that the defendant No.1 is a proprietorship concern and one Vinayak Dhaklu Yalave is the proprietor of the said concern. Since he died before the institution of this suit, plaintiff filed the suit by making his father, mother, wife and children as defendant No.2 to 6. Neither there is any pleadings nor there is any evidence or material to

show that the defendant No.2, who is father of the sole proprietor, has inherited or acquired any properties or estate of the deceased proprietor. The defendant No.2 is also not a Class-I legal heir of deceased proprietor. The deceased sole proprietor Vinayak Dhaklu Yalave has got Class-I legal heirs, who are his mother, wife, children and they are already on record as defendant No.3 to 6.

12. The proposed defendant No.2(1) to 2(3) are the brother and sisters of deceased sole proprietor. They are not the Class-I legal heirs. When there are Class-I legal heirs, father, brother and sisters will not acquire any properties or estate from the deceased. Neither there is any pleadings nor any materials to show that the defendant No.2 or brother and sisters of sole proprietor have acquired any estate from the deceased sole proprietor, Vinayak Dhaklu Yalave. In the absence of any such pleadings and materials, one cannot say that the cause of action has survived upon the brother and sisters of deceased sole proprietor to bring them on record. Under such circumstances, considering the facts of this case, brother and sisters of sole proprietor are not the necessary parties to this suit, when there is no pleadings and evidence to show that they have acquired any estate or properties of deceased sole proprietor. Therefore, question of bringing them on record in the present suit will

not arise. Merely because they are legal heirs of deceased defendant No.2, proposed defendant No.2(1) to 2(3) can not be brought on record, when cause of action does not survive on them. Hence, by answering the above point **in the Negative**, I proceed to pass the following:

ORDER

**IA No.IV to VI filed by the plaintiff
under Order XXII Rule 3 read with Section
151 of CPC, under Order XXII Rule 9 read
with Section 151 of CPC and under Section
5 of Limitation Act are dismissed.**

**I direct both the parties to bear
their respective costs.**

(Dictated to the Stenographer Grade-III, after transcription, computerized and print out taken by her, corrected, signed and then pronounced by me in the Open Court, on this **14th day of January 2026**)

**(Manjunath Nayak),
Prl. District & Sessions Judge,
Belagavi.**