

KABG040008362015



**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE & JMFC,
AT : BELAGAVI.**

PRESENT : Smt. Preeti L. Malavalli, B.B.A.,LL.B (Hons.)
Prl. Civil Judge & JMFC.,
Belagavi.

DATED THIS THE 31ST DAY OF JULY-2026

ORIGINAL SUIT NO.321/2015

PLAINTIFF :

1)	Smt. Anandabai W/o. Sidrai Chougale.
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Vs.

DEFENDANTS :

1)	Shri. Mallappa S/o. Bhimarao @ Bhimarai Joyi and others.
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PARTIES TO I.A.NO.VI TO VIII

Applicant/Plaintiff :

1)	Smt. Anandabai W/o. Sidrai Chougale.
	(By Shri. A. C. Kathari, Adv.)

Vs.

Opponents/Defendants :

1)	Shri. Mallappa S/o. Bhimarao @ Bhimarai Joyi and others.
	(By Shri. B. B. Mokashi, Adv.

1.	Provision under which application is filed	U/O.22 Rule 4 R/w. Sec.151 of C.P.C., Sec.5 of Limitation Act & U/O. 22 Rule 4(5) R/w. Sec.151 of C.P.C.
2.	Relief sought for	To bring the LRs of defendant No.2
3.	The date on which the application is filed	18.12.2025
4.	Number of application	VI to VIII
5.	The date on which the objections are filed by different opponent	23.02.2026
6.	The date on which the orders were passed on the said application.	31.07.2026

COMMON ORDERS ON I.A.NO.VI TO VIII

These applications are filed U/O.XXII Rule 4 R/w. Sec.151 of C.P.C., U/Sec.5 of Limitation Act and U/O.XXII Rule 4(5) R/w.

Sec.151 of C.P.C. by the counsel for plaintiff to bring LR's of deceased defendant No.2 on record.

2. In the affidavits annexed to the accompanying applications, the Power of Attorney Holder of plaintiff has stated that defendant No.2 has expired on 02.12.2023 at Sambra, Belagavi, leaving behind his legal representatives i.e., proposed defendants No.2(a) to 2(g) mentioned in the applications. It is further stated in the applications that the legal heirs of defendant No.2 are to be brought on record in view of death of defendant No.2 since their presence is very much necessary in the suit. On these grounds, the Power of Attorney Holder of plaintiff has prayed to allow the applications.

3. The counsel for defendants has filed objection to the said applications on the ground that the applications are not maintainable in the eye of law as there is delay of more than 90 days in bringing LR's of deceased defendant No.2 on record. That the plaintiffs have to explain each day's delay. That the suit is abated as the LR's of deceased defendant No.2 are not brought on record and hence the plaintiff cannot proceed with the case. They have further stated that the plaintiff has not given grounds for allowing the applications. On these grounds, the counsel for defendants has prayed to dismiss the present applications.

4. The following points would arise for my consideration :

- i) Whether the right to sue survives against LRs of deceased defendant No.2 ?*
- ii) Whether the LRs of deceased defendant No.2 can be brought on record by condoning the delay and setting aside the abatement ?*
- iii) What order ?*

5. My answer to above points are as under :

Point No.1 : In the Affirmative.

Point No.2 : In the Affirmative.

Point No.3 : As per final order for the following:

REASONS

6. Point No.1 and 2 : In order to avoid repetition both the points are discussed together. The plaintiff has filed this suit for the relief of Partition and Separate Possession against the defendants. The defendant No.2 died on 02.12.2023. Since the suit is for Partition and Separate Possession, the right to sue survives even after death of the defendant No.2. Where the defendant dies the right to sue survives and it can be continued against the LRs of deceased defendant. The defendants No.2(a) to 2(g) being the surviving LRs of deceased defendant No.2, the

plaintiff has got right to proceed against the LRs of defendant No.2 and it is necessary to bring them on record to avoid multiplicity of proceedings. The applications cannot be rejected only on the ground that the applications are filed belatedly. Delay is not the ground for rejection of the applications in suits for Partition and Separate Possession. Though the defendants have contended that the suit is abated as the plaintiff has not taken steps to bring LRs of defendant No.2 on record within 90 days from the date of his death, it is pertinent to note that the present suit was decreed on 16.04.2021 itself and the same was remanded by Appellate Court with direction to proceed with the suit by giving opportunity to defendant to contest the matter and it was so remanded in the year 2025 only. As such, no need arose for the plaintiff to bring LRs of defendant No.2 on record when the case was disposed of already before this Court. And when the case stood remanded, the plaintiff has taken steps to bring LRs of defendant No.2 on record and it cannot be found fault with. Moreover, the defendants or the proposed defendants i.e., LRs of defendant No.2 have not objected on the ground that they are not legal heirs of defendant No.2. Hence, this Court comes to the conclusion that the said LRs of defendant No.2 are to be brought on record by setting aside the abatement and condoning the delay. Hence, I answer **Point No.1 and 2 in the Affirmative.**

7. **Point No.3** : For the above said discussion on Point No.1 and 2, I proceed to pass the following :

ORDER

The applications i.e., I.A.No.VI to VIII filed U/O.XXII Rule 4 R/w. Sec.151 of C.P.C., U/Sec.5 of Limitation Act and U/O.XXII Rule 4(5) R/w. Sec.151 of C.P.C. are hereby allowed.

The LR's of defendant No.2 as mentioned in the aforesaid applications, are permitted to be brought on record as defendants No.2(a) to 2(g).

The counsel for plaintiff is hereby directed to carry out amendment and to file amended plaint accordingly.

No order as to costs.

(Dictated to the stenographer directly on computer, revised by me & after corrections pronounced in the open Court on this the 31st day of July-2026.)

**(Smt. Preeti L. Malavalli)
Prl. Civil Judge & JMFC,
Belagavi.**