

**ORDERS ON IA No.III to V.**

The applicant / plaintiff has filed these interim applications under Order 22 Rule 4 of CPC, under Order 22 Rule 9 R/w Sec.151 of CPC and under Section 5 of Limitation Act seeking to implead the legal representatives of deceased defendant No.1 by name Siddappa, in the ends of justice and equity.

2. These applications are accompanied by the separate affidavits filed by the plaintiff. The gist of the application averments is that the present suit is filed seeking for the relief of declaration and injunction and also delivery of possession with respect to suit schedule properties and such other reliefs. During the pendency of the suit, the 1<sup>st</sup> defendant died on 19.05.2022 leaving behind his wife and daughter as per law right to sue survives upon them. The LR's of 1<sup>st</sup> defendant is just and necessary to proceed in the case and also to bring on record and pleased to set aside the order of abatement of suit against 1<sup>st</sup> defendant. There is a delay in filing applications to bring the L.Rs being the wife and daughter of 1<sup>st</sup> defendant on record and hence, sought to allow the applications.

3. In spite of service of notice on IA's, the LR's of defendant No.1 remained absent. The other defendants on record has not resisted this application.

4. Heard the counsel for the applicant/plaintiff. Perused the case records.

5. The points that arise for consideration are as follows:

1. *Whether the right to sue is survived upon the proposed legal heirs?*
2. *Whether the plaintiff made out grounds for condoning the delay and setting aside the statutory order of abatement?*
3. *What order ?*

6. The above points are answered as follows:

Point No.1&2 : In the Affirmative.

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

### **R E A S O N S**

7. **Points No.1&2** :- Both points are taken together for common discussion to avoid repetition of facts.

The present suit is one for the relief of declaration and possession. As per the application averment the 1<sup>st</sup> defendant by name Siddappa died during the pendency of suit on 19.05.2022 leaving behind the opponents to these IA's and despite of notice, the opponents have not appeared to contest the applications or denied the same. In consideration of the suit averments and the evidence of

PW-1 on these IA's, it is prima facie satisfied that the opponents to these IA's are the only legal heirs upon whom the right to sue / defend has been survived upon. In consideration of the averments made out in IA No.IV and V, it is found necessary to set aside the statutory order of abatement by condoning the delay in filing these applications in the interest of justice and equity. Accordingly, **the points No.1 and 2 under consideration are answered in the affirmative.**

8. **Point No.3:** In view of discussion in the foregoing point, the following;

**ORDER**

The interim applications filed by the applicant / plaintiff, U/O 22 Rule 4, U/O 22 Rule 9 R/w Sec.151 of CPC and U/S 5 of the Limitation Act are allowed.

Consequently, the delay in filling the present applications are condoned and statutory order of abatement against the defendant No.1 is set aside.

The applicant / plaintiff is permitted to bring the opponents to this IA on record as the legal heir of deceased 1<sup>st</sup> defendant i.e., as defendants No.1(a) and 1(b).

For amendment of plaint and to  
furnish amended plaint by:  
03.02.2026.

(Dictated to Stenographer directly on computer, on my dictation, corrected by  
me and then pronounced in the open court on this 9<sup>th</sup> day January-2026)

**Sd/-**  
Senior Civil Judge,  
Kadur.