

11.09.2025

ORDERS ON I.A.No.III

The applicant/petitioner has filed I.A.No.III under Sec.5 of Limitation Act to condone the delay in preferring the accompanying LRs, under Order XXII Rule 3 R/w. Sec.151 of CPC to set aside abatement and also U/O. XXII Rule 9 R/w Sec.151 of CPC to bring the legal heirs on record.

2. In the affidavit annexed to the application applicant/petitioner has stated that, he has filed this suit against the respondents for obtaining the final decree with respect to the petition schedule property as per the decree passed by this Court in OS.No.105/2010. In this petition the Hon'ble Court was order to PDO and Surveyor to measure the suit schedule property and allot the share of the petitioner and the same as to be reported before this Court. Now at this stage the petitioner was died on 05.01.2025 leaving behind me and other applicants as legal heirs and legal representatives. Now I am filing this application to bringing me and other applicants are the legal heirs and legal representatives of the petitioner and permit me

and other applicants to proceed the petition against the respondents. There will be no hardship or loss caused to the respondent and on the other hand if this application is not allowed I and other legal heirs of petitioner i.e., the applicants will be put to greater hardship and injury which cannot be compensated in any other manner.

Hence, without any further loss of time, I was constrained to maintain this application, for the reason that, the right to sue also survives against the said LRs. Accordingly, prayed to allow the applications.

3. The respondents have filed objections to the applications stating that after the death of a party to the proceedings, necessary application is to be filed within time. If there is a delay in filing such applications, necessary application to bring LRs and necessary application to set-aside abatement and necessary application to condone the delay with bonafide reasons are to be filed separately. But the applicants have filed the present application is barred by law and not maintainable. The petitioner was died on 05.01.2025. But the applicants could not take

any steps to file necessary application to the Court within the time and suppressed the facts even this case was stand posted for many hearing dates and the applicants did not to disclose the death of the petitioner within time to before this Court. The commissioner work was conducted and it is lack of procedure as this petition was abated due to death of the petitioner. The application is also not maintainable without any proper reason for condone the delay. The respondents have preferred an appeal before The Hon'ble Additional Senior Civil Judge, Chamarajanagara in RA.No.66/2023 against the petitioner. During the pendency of the said appeal, the petitioner was died and hence her LRs were brought on record. Since the said appeal is pending before the Hon'ble Appellate Court this petition is not maintainable and liable to be dismissed.

4. Heard and perused the materials available on record.

5. Through these applications, the applicants have sought to implead the legal heirs of petitioners and to receive impleading application by setting aside the abatement

after condoning the delay. It is pertinent to note that suit is one filed for the relief of partition suit. In these types of suit, the right to sue subsisting even after the death of original petitioner. The right to sue survives with the property. Hence, it is just and necessary to consider the applications filed by the applicants. No prejudice will be caused to the respondents if these applications are allowed. On the other hand, if the applications are rejected, the decree cannot be passed in the absence of LRs of deceased petitioner. Hence, it is just and necessary to bring them on record to proceed with the case. Accordingly, I proceed to pass the following:

ORDER

The I.A.No.III filed by the applicants/petitioners under Sec.5 of Limitation Act, filed U/Order XXII Rule 3 R/w. Sec.151 of CPC and XXII Rule 9 R/w Sec.151 of CPC are hereby allowed.

Abatement against petitioners is hereby set aside.

The legal heirs of petitioner is brought on record as petitioner Nos.1 to 6.

The petitioner is directed to carry out the amendment and furnish the amended plaint.

Call on 25.09.2025.

**C.J. & JMFC,
Yelandur.**