

KADK200008662021



**IN THE COURT OF SENIOR CIVIL JUDGE AND JMFC AT
BANTWAL, DAKSHINA KANNADA**

**PRESENT: SRI ANIL PRAKASH M.P., B.A.L., L.L.B. M.B.A.,
Senior Civil Judge & J.M.F.C., Bantwal**

Dated this the 30th day of June 2026

R.A./26/2021

APPELLANT:-

Smt. Varija.
W/o. Annu Poojary,
Aged about 65 years,
R/at. Kepulakodi, Yermejalu,
Veerakamba Village and Post,
Bantwal Taluk, D.K.,

(By Smt. C.S Advocate)

V/s.

RESPONDENTS:

1. K.M Ramesha
S/o. Dugappa Poojary
Aged about 72 years,
R/at. Kudremaru House,
Golthamajalu Village and Post,
Kalladka, Bantwal.
2. Chidananda
S/o. Dugappa Poojary
Aged about 55 years,
R/at. Golthamajalu Village and Post,
Kalladka, Bantwal.
3. K. Sheenappa
S/o. Dugappa Poojary

Aged about 66 years,
R/at. Kudremaru House,
Golthamajalu Village and Post,
Kalladka, Bantwal.

4. Smt. Leelavathi
W/o. Yadava Poojary
Aged about 62 years,
R/at. Kudremaru House,
Golthamajalu Village and Post,
Kalladka, Bantwal.

5. Smt. Radha
W/o. Narayana Poojary
Aged about 60 years,
R/at. Netlapade House,
Golthamajalu Village and Post,
Kalladka, Bantwal.

(R1 by Sri.K.R.U. Advocate)

(R2 - Exparte)

(R3 to R5 by Sri.P.B.S. Advocate)

ORDERS ON IA NO.I

Petition/Appellant:-

Varija

V/s.

Respondents/Respondents in appeal:-

K.M Ramesha & Others

ORDERS ON IA NO.I

The appellant has filed this IA No.I under Sec.5 of Limitation Act to condone the delay if any in filing this appeal.

2. She has has sworn to an affidavit, wherein she has stated that she has preferred application to Legal Aid committee and

thereafter counsel from legal Aid Committee has contacted her and thereafter records of this suit came to be collected in order to find out whether appeal has to be preferred and thereafter as per her instruction she has thought to prefer the appeal.

3. Further she has submitted that due to ill health she went to the house of her daughter and meanwhile counsel representing her has sent postal card to affix her signature to appeal memo and due to her absence at her house she could not collect postal card, but thereafter she came to know about the same through postman and accordingly she rushed to the office of advocate and has affixed her signature to vakalath and appeal memo and for that reason there is delay in filing this appeal and same is not intentional and accordingly submits to allow IA No.I.

4. On other hand, respondent No.1 has filed objection denying the affidavit averments to IA No.I as false and submitted that the petitioner has not made out any grounds to condone the delay and also the grounds forthcoming in the affidavit are false and for that reason submits to dismiss IA No.I.

5. On the other hand, respondents No.3 to 5 have filed common objection denying the affidavit averments to IA No.I as false and also they have submitted that there is inordinate delay in filing the appeal and for that reason submits to dismiss IA No.I.

6. Perused application and objection, the point that arises for my consideration are:

1. **Whether the appellant has made out grounds to condone the delay in filing this petition under Section 5 of Limitation Act?**
2. **What order?**

7. Heard learned counsel for Appellant and respondents and I have answered **Point No.1 in the affirmative** in the following:

REASONS

8. **Point No.1:** in order to prove point No.1 the appellant herself got examined as PW.1 and has filed affidavit in lieu of examination-in-chief and in her cross-examination dated 4.06.2026 by learned counsel for respondent No.1 it was elicited that,

“ನನಗೆ ಅನಾರೋಗ್ಯ ಇತ್ತು ಎಂದು ತೋರಿಸಲು ಯಾವುದಾದರೂ ವೈದ್ಯಕೀಯ ದಾಖಲೆ ಇದೆಯೋ ಎಂದರೆ ಸಾಕ್ಷಿ ಇರಬಹುದು ನನಗೆ ಓದಲು ಬರುವುದಿಲ್ಲ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ಆ ರೀತಿ ದಾಖಲೆ ಇದ್ದರೆ ಅದನ್ನು ನ್ಯಾಯಾಲಯಕ್ಕೆ ಹಾಜರುಮಾಡಲು ತೊಂದರೆ ಇಲ್ಲವಾ ಎಂದರೆ ಸಾಕ್ಷಿ ಇದ್ದರೆ ಹಾಜರುಮಾಡುವುದಾಗಿ ನುಡಿಯುತ್ತಾರೆ. ನನಗೆ ಅನಾರೋಗ್ಯ ಇತ್ತು ಹಾಗೂ ನಾನು ಚಿಕಿತ್ಸೆ ಪಡೆಯುತ್ತಿದ್ದೆ ಎಂದು ಸುಳ್ಳು ಹೇಳುತ್ತಿದ್ದೇನೆ ಎಂದರೆ ಸುಳ್ಳು. ನಾನು ಉದ್ದೇಶಪೂರ್ವಕವಾಗಿ ಕಾಲವಿಳಂಬ ಮಾಡಿ ಈಗ ಸುಳ್ಳು ಸಾಕ್ಷಿ ಹೇಳುತ್ತಿದ್ದೇನೆ ಎಂದರೆ ಸಾಕ್ಷಿ ಸುಳ್ಳು ಎಂದು ನುಡಿಯುತ್ತಾರೆ.”

and from the above cross-examination it is clear that the witness has stated that she will produce medical documents which goes to show about her ill health if same is available, but till now she has not produced any such medical records and in cross-examination by learned counsel for respondents No.3 to 5 nothing is elicited.

9. Further on perusal of certified copy of Judgment produced along with appeal memo same goes to show that Judgment was

pronounced on 5.08.2019 and the certificate annexed along with Judgment and Decree goes to show that certified copy was applied on 21.08.2019 and same was received on 31.08.2019 and on perusal of appeal memo same goes to show that appeal came to be filed 20.11.2019.

10. Further as per Sec.12 of Limitation Act, the period for obtaining certified copy of Judgment and Decree has to be excluded while calculating period of limitation and for that reason to the case on hand limitation commences from 1.09.2019 and as per article 116(b) of Limitation Act, the period of limitation to prefer appeal against Decree is 30 days and the date of commencement of limitation is from the date of decree and to the case on hand the certified copy of decree is obtained on 31.08.2019 and as discussed above the period commences from 1.09.2019 and for that reason the appellant has to prefer appeal within 1.10.2019, but the appeal memo goes to show that appeal is preferred on 20.11.2019 and for that reason there is a delay of 40 days in filing this appeal, but however at this stage if we peruse the deposition same goes to show that the appellant is aged about 78 years and also at this stage if we peruse deposition same goes to show that the appellant has affixed her thumb impression which itself goes to show that she is illiterate and though she has taken contention that she was suffering from ill health, but she has not produced any documents to substantiate the same, but that itself is not a ground to reject IA No.I and from the evidence it appears that the appellant has not filed appeal in time due to illiteracy and old age and apart from that the delay is

only for period of 40 days, which is not inordinate nor same cause prejudice to respondents and apart from that the appellant has filed this appeal against judgment of dismissal for relief of partition and separate possession and the property rights of appellant is also involved in this appeal and for that reason, I am of the opinion that it is a fit case to condone the delay and accordingly I have answered **Point No.1 in the affirmative.**

11. **Point No.2:** In view of my findings on point No.1, I proceed to pass the following:

ORDER

The I.A.No.I filed by the appellant under Sec.5 of Limitation Act, is hereby allowed.

The delay of 40 days in filing this appeal is hereby condoned.

Office is directed to register appeal in the register of the appeal maintained by office.

No order as to costs.

(Dictated to the Stenographer directly on computer, computerized by her, corrected and then pronounced by me in the open court on this the 30th day of June 2026).

(ANIL PRAKASH.M.P.)
Senior Civil Judge & JMFC.,
Bantwal, D.K.