

KADK200009122021



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

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

Dated this the 05th day of August 2026

R.A/29/2021

APPELLANTS:-

1. Shakunthala
Aged 40 years
D/o.Krishna Shekha
2. Shyamala
Aged 35 years
D/o. Krishna Shekha
3. Raghunatha Alva
Aged 69 years
S/o.Sankayya Alva

All are residing at Muliya
Alike Village and Post,
Bantwal Taluk.

(By Sri.P.J.R. Adv.)

V/s.

RESPONDENTS:-

1. Smt. Ratna Shetty
Aged about 85 years,
W/o Chandrasahsa Shetty

R/at. Muliya
Alike Village and Post
Bantwal Taluk.

2. Smt.Jayalaxmi
Aged about years,
D/o Late Rajivi
W/o. Sithrama Rai
R/at. Kasaragod, Kerala State.
3. Smt. Vijayalaxmi
Aged about years,
D/o. Late Rajivi
W/o. Devadasa Rai
R/at Kellinja
Veerakamba Village
Bantwal Taluk.
4. Smt. Mohini
Aged about years,
W/o. Shivaram Rai
R/at. Kodyame, Via Kumble
Kasaragod District, Kerala-670321.
5. Smt. Shalini
Aged about years,
W/o Janardhana Shetty,
R/at. Kariyangala, Polali Post
Bantwal Taluk.
6. Smt.Janani
Aged about years,
W/o Ganesh Shetty
R/at Golthamajalu Village
Kalladka Post
Bantwala Taluk.
7. Chandranatha Alva
Aged about years,
S/o Sankayya Alva

8. Sooryanatha Alva
Aged about years,
S/o. Sankayya Alva
No.7 to 9 are R/at. Mithalike
Alike Village and Post
Bantwal Taluk.
9. M. Jaganatha Alva
Aged about years
S/o Sankayya Alva
Advocate & Consultants,
No.54/1, Nanjappa Road
Shanthinagar, Bangalore-27.
10. Mr. Sankappa Shekha
Aged about years
S/o. Bainki Shekha
Shetty Farms
Opposite Kenya Primary School
K.C Road, Kenya, Kotekar,
Mangalore.
11. Narayana Shekha
Aged about years
S/o.Bainki Shekha
12. Balakrishna Shekha @ Krishna Shekha
Aged about years
S/o. Bainki Shekha
No.11 and 12 are R/at. Mithalike
Alike Village, S.S. Vihar Post
Bantwal Taluk.
13. Jayarama Rai
Aged about years
S/o. Vishwanatha Rai
R/at. Nekkare, Alike Village
S.S. Vihar Post
Bantwal Taluk.

14. Ramakrishna Sheka (died)
Aged about years
S/o. Late Venkappa Sheka
- 14(a) Pushpa
W/o. Late Ramakrishna Sheka
Major,
- 14(b) Divya
D/o.Late Ramakrishna Sheka
No.14(a) and 14(b) are R/at. Matadamooole
Kumbdaje Village, Movar Post
Mulleria via, Kasaragod Taluk,
Keral State.
15. Narayana Sheka
Aged about years
S/o. Late Venkappa Sheka
16. Sumathi
aged about years
D/o. Late Venkappa Sheka
No.14 to 16 are R/at.Matadamooole
Kumbdaje Village, Movar Post
Mulleria Via, Kasaragod Taluk,
Keral State.

(Respondent No.1 by Sri.P.B.S., Advocate)
(Respondents No.2, 4, 8, 9 by Sri.D.P., Advocate)

ORDERS ON IA NO.I

Applicant/Appellant:-

Shakunthala and 2 others

V/s.

Opponents/Respondents:-

Smt. Ratna Shetty & 15 Others

ORDERS ON IA NO.I

The appellants have filed this IA No.I under Sec.5 of Limitation Act to condone the delay in filing present appeal.

2. The appellant No.3 has sworn to an affidavit, wherein he has stated that he was defendant No.2 before learned trial court in '**O.S No.55/2010**' and the judgment was pronounced on 05.04.2021 and he has applied for certified copy of 08.04.2021 and certified copy came to be received on 16.04.2021 but due to '**Covid**' he could not contact advocate and in meantime his sister i.e., defendant No.1 died and for that reason appeal could not be filed in time and for that reason the delay in filing appeal is not intentional and accordingly submits to allow I.A No.1.

3. On other hand respondent No.1 has filed objection manumitting that, the appellants have not made out grounds to allow I.A No.1 and has denied other affidavit averments to I.A No.1 and has submitted to dismiss I.A No.1.

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

1. Whether the appellants have made out grounds to condone delay in filing this appeal Under Section 5 of Limitation Act?

2. What order?

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

REASONS

6. **Point No.1** : The appellants in order to prove Point No.1 have examined appellant No.3 as A.W.1 and he has filed affidavit in lieu of examination-in-chief re-iterating affidavit averments to I.A.No.I.

7. Further in his cross examination it was elicited that,

“ಅಸಲು ದಾವಾ ಸಂಖ್ಯೆ **55/2010** ರ ಸಂಪೂರ್ಣ ಮೇಲ್ವಿಚಾರಣೆ ನಾನೇ ಮಾಡುತ್ತಿದ್ದೆ ಎಂದರೆ ನಿಜ. ನನ್ನ ಹಾಗೂ **1** ನೇ ಎದುರುದಾರರ ನಡುವೆ **4** ವ್ಯಾಜ್ಯ ಇದೆ ಎಂದರೆ ನಿಜ. ಅಸಲು ದಾವಾ ಸಂಖ್ಯೆ **55/2010**ರ ತೀರ್ಪು ಆದ ನಂತರ ವಕೀಲರು ನನಗೆ ಮಾಹಿತಿ ನೀಡಿದ್ದಾರಾ ಎಂದರೆ ಸಾಕ್ಷಿ ತಿಳಿಸಿರುವುದಾಗಿ ನುಡಿಯುತ್ತಾರೆ. ಸದರಿ ತೀರ್ಪು ಆದ ಎಷ್ಟು ದಿನಗಳ ನಂತರ ನಾನು ವಕೀಲರನ್ನು ಭೇಟಿಯಾಗಿದ್ದೇನೆ ಎಂದರೆ ಸಾಕ್ಷಿ ಒಂದರಿಂದ ಎರಡು ವಾರ ಎಂದು ನುಡಿಯುತ್ತಾರೆ.

ನಾನು ವಕೀಲರನ್ನು ಭೇಟಿಯಾದ ನಂತರ ಸದರಿಯವರು ವೇಲ್ಮನವಿ ಸಲ್ಲಿಸಬೇಕೆಂದು ಹೇಳಿದ್ದಾರಾ ಎಂದರೆ ಸಾಕ್ಷಿ ನೆನಪಿಲ್ಲ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ತೀರ್ಪು ಆದ ನಂತರ ಉಳಿದ ಮೇಲ್ಮನವಿದಾರರು ವಕೀಲರನ್ನು ಭೇಟಿಯಾಗಿದ್ದಾರಾ ಎಂದರೆ ಸಾಕ್ಷಿ ತನಗೆ ಗೊತ್ತಿಲ್ಲ ಎಂದು ನುಡಿಯುತ್ತಾರೆ.

ತೀರ್ಪು ಆದ ಎಷ್ಟು ದಿನಗಳ ನಂತರ ಮೇಲ್ಮನವಿ ಸಲ್ಲಿಸಿದ್ದೇನೆ ಎಂದರೆ ಸಾಕ್ಷಿ ನೆನಪಿಲ್ಲ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ಮೇಲ್ಮನವಿ ತಡವಾಗಿ ಸಲ್ಲಿಸಲು ಏನು ಕಾರಣ ಎಂದರೆ ಸಾಕ್ಷಿ ತನ್ನ ಆರೋಗ್ಯ ಸರಿ ಇರುವುದಿಲ್ಲ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ನನ್ನ ಆರೋಗ್ಯ ಸರಿ ಇಲ್ಲ ಎಂದು ತೋರಿಸಲು ದಾಖಲೆ ನೀಡಿದ್ದೇನಾ ಎಂದರೆ ಸಾಕ್ಷಿ ಕೊಟ್ಟಿರಬಹುದು ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ನಾನು ಮೇಲ್ಮನವಿ ಸಲ್ಲಿಸಲು ಆದ ಕಾಲವಿಳಂಬ ಮನ್ನಿಸಲು ಸಕಾರಣ ನೀಡಿಲ್ಲ ಎಂದರೆ ಸುಳ್ಳು. ನನ್ನ ಬೇಜವಾಬ್ದಾರಿಯಿಂದ ಮೇಲ್ಮನವಿ ತಡವಾಗಿ ಸಲ್ಲಿಸಲಾಗಿದೆ ಎಂದರೆ ಸುಳ್ಳು.

ನನ್ನ ಮುಖ್ಯ ವಿಚಾರಣಾ ಪ್ರಮಾಣ ಪತ್ರದಲ್ಲಿ ಹೇಳಿರುವ ವಿಚಾರಗಳು ಸುಳ್ಳಿನಿಂದ ಕೂಡಿದೆ ಎಂದರೆ ಸುಳ್ಳು. ”

and from the above deposition it was elicited that, after 1 to 2 weeks of judgment he has contacted advocate but he do not remember whether advocate has advised to prefer appeal and also he cannot say whether other appellants have contacted advocate and he do not remember after how much days of judgment he has preferred appeal and there is a delay in filing the appeal due to health issues and he might have produce the documents which goes to show his health issue and except that nothing is elicited.

8. Further the judgment produced along with appeal memo goes to show that, the judgment was pronounced on 05.04.2021 and the appellants have applied for certified copies

on 08.04.2021 and certified copies were furnished on 16.04.2021 and as per **section 12 of Limitation Act**, the period from which copy applied and copy taken has to be excluded and for that reason starting point of limitation to file appeal commences from 16.04.2021.

9. Further as per **Article 116 (b)** the period is 30 days to prefer appeal to any other court from order or decree other than Hon'ble High Court and for that reason the period ends on 16.05.2021, but it is not in dispute in the month of May there will be vacation for civil courts and for that reason the period of vacation has to be excluded for that reason the period ends in the last week of May and the appeal is preferred on 11.08.2021 and for that reason there is a delay for period of around 90 days and documents have produced Ex.A1 which is the death certificate of 'Smt.Kalavathi' i.e., defendant No.1 in the suit and same goes to show that, she died on 21.05.2021 and also it is not in dispute the Covid was prevailing in the year 2021 and for that reason the court should be liberal in condoning the delay and accordingly I have answered **Point No.1 in the Affirmative.**

10. **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 appellants under Sec.5 of Limitation Act, is hereby allowed.

The delay of around 90 days in filing this appeal is hereby condoned.

Office is directed to register the appeal in the register of appeal.

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 05th day of August 2026).

(ANIL PRAKASH.M.P.)

Prl. Senior Civil Judge & JMFC.,
Bantwal, D.K.

ANNEXURE**List of witnesses examined for Appellants :-**

A.W.1 : Mr.Raghunatha Alva

List of documents marked for Appellants:-

Ex.A1 : Death Certificate

List of witnesses examined for Respondents :-

NIL

List of document marked for Respondents:-

NIL

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