

ORDER ON I.A.NO.11 U/O. XXII RULE 4 AND SECTION 151 OF
CPC AND I.A.NO.14 UNDER SECTION 5 OF LIMITATION R/W
SECTION 151 OF CPC FILED BY THE PLAINTIFFS, DATED
20-7-2018 AND 27-10-2018.

The plaintiffs have filed the above interim applications along with supporting affidavits craving leave of this court to bring the legal heirs of deceased Shanthappa Poojary i.e., defendant No.15 along with interim application U/sec. 5 of limitation act to condone the delay to bring the legal heirs on records.

2. The plaintiffs contends that this is a suit for partition during the pendency of the case defendant No.15 has expired on 25-12-2017, hence impleadment of legal heirs of defendant No.15 as defendant No.15(a) and 15(b) is very much essential to decide the case on merits.

3. The defendant No.3 has objected to above interim application contends that there is no impleading application filed to condone the delay, hence plaintiffs have filed the interim application No.14 to condone the delay and have contended that

they came to know the fact of death of defendant No.15 during the cross-examination of PW.1, hence there is delay in the filing the above interim application and delay is caused is not intentional one. Hence prays to allow the above interim application.

4. Heard and perused the materials on record.

5. In order to decide the case on merits as the suit is filed for partition. The legal heirs of deceased Shanthappa Poojary i.e., defendant No.15 are necessary parties to decide the case on merits, hence I proceed to pass the following:

:: ORDER ::

**Interim application No.11 and 14 filed
by the plaintiffs are allowed.**

**Addl. Senior Civil Judge & JMFC,
Puttur, D.K.**

For amendment and amended plaint.

**ORDER ON I.A.NO.12 U/O. I RULE 10(2) AND SECTION 151 OF CPC
AND I.A.NO.13 AND 15 UNDER ORDER XXXII RULE 1 AND 2 AND
SECTION 151 OF CPC FILED BY THE PLAINTIFFS, DATED 31-7-
2018, 27-10-2018 AND 24-01-2019.**

The plaintiffs have filed the above interim applications along with supporting affidavits to add the proposed parties as additional plaintiffs, contending that during the pendency of the above suit 12 children's were born and all the children's are members of the family and have got 1 share each, further contended that the proposed plaintiffs are minor children's, hence pleads to appoint respective mothers of the children's to be appoint as guardians to represent the interest of the minor children's.

2. Defendant No.3 has filed the objections contending that in order to appoint the respective mothers as guardian has been sought after the objections filed by the defendant No.3 by filing necessary application after the specific objections raised by the defendant No.3 contending that necessary interim applications for appointment of guardian had not been field along with interim application No.12 and that plaintiffs have filed interim

application 14 and 15 after the objections raised by the defendant.

3. Heard and perused the materials on record.

4. In the present case the suit is filed for partition of plaintiffs and defendants who are stated to be governed by Aliyasanthana law, have stated to be born during the pendency of suit. The plaintiff advocate has relied upon citation, upheld by **Hon'ble high court of Karnataka in writ petition No.1085 of 1963 between Ratnamala v/s. State of Mysore and others on 2-08-1967**, it has been held that under the customary Aliyasanthana law, every member of kutumba has equal rights in the properties of the kutumba by reason of his or her birth. In view of the above citation, the proposed parties who are sought to be impleaded as necessary parties to the case representing through their respective mother are necessary as it is a partition suit, every member of kutumba who takes birth in a kutumba governed under aliyanthana law has right in the property of the kutumba. To decide the case on merits as the proposed parties

are necessary parties to the present suit. hence I proceed to pass the following:

:: ORDER ::

**Interim application No.12, 13 and 15
filed by the plaintiffs are allowed.**

**The proposed parties are allowed to
brought on record representing through their
respective mothers.**

**Addl. Senior Civil Judge & JMFC,
Puttur, D.K.**