



IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL
JUDGE & J.M.F.C., HUBBALLI

Present:

SMT. SARVAMANGALA K.M.,

B.A. LL.B.,

I Addl. Senior Civil Judge & J.M.F.C., Hubballi.

Misc. No.32/2022

Dated this the 09th day of June, 2026

Petitioner/s : *Sri. Balanagouda S/o*
(Original Def. *Basanagouda Patil, Age:66*
No.3) *years, Occ:Retired,*
R/o.Machapur Road,
Kalaghatagi, Dist:Dharwad.
(By Sri. M.S. Banad, Adv.,)

.Vs.

Respondent/s : *1. Shrikantgouda S/o*
(Ori. Plaintiff & *Krishnagouda Patil, Age:48*
other Ori. *years, Occ:Agriculture,*
Defendants) *R/o.Karadikoppa Village,*
Tq:Hubballi, Dist:Dharwad.
Now R/o.Chikkamalligawad
Village, Tq: & Dist:Dharwad.

2. Neelawa W/o
Yankanagouda Patil, Age:48
years, Occ:Household work,
R/o.Karadikoppa Village,
Tq:Hubballi, Dist:Dharwad.

3. Shivanagouda S/o
Yankanagouda Patil, Age:26
years, Occ:Agriculture,
R/o.Karadikoppa Village,
Tq:Hubballi, Dist:Dharwad.

4. Manju S/o Yankanagouda
Patil,
Age:23 years,



- Occ:Agriculture,
R/o.Karadikoppa Village,
Tq:Hubballi, Dist:Dharwad.*
5. *Subhasgouda S/o
Basanagouda Patil, Age:71
years, Occ:Agriculture,
R/o.Karadikoppa Village,
Tq:Hubballi, Dist:Dharwad.*
6. *Ninganagouda S/o
Basanagouda Patil, Age:56
years, Occ:Agriculture,
R/o.Karadikoppa Village,
Tq:Hubballi, Dist:Dharwad.*
7. *Ranganagouda S/o
Basanagouda Patil, Age:53
years, Occ:Agriculture,
R/o.Karadikoppa Village,
Tq:Hubballi, Dist:Dharwad.*
8. *Sabavva W/o Yallanagouda
Patil*
*Since deceased by her legal
heir.*
- 8a. *Sri. Devraj S/o
Yallappagouda Patil, Age:30
years, Occ:Agriculture,
R/o.Karadikoppa Village,
Tq:Hubballi, Dist:Dharwad.*
9. *Devraj S/o Yallanagouda
Patil, Age:54 years,
Occ:Agriculture,
R/o.Karadikoppa Village,
Tq:Hubballi, Dist:Dharwad.*
10. *Smt. Ratnawa W/o
Anandgouda Patil, Age:69
years, Occ:Household work,
R/o.Karadikoppa Village,
Tq:Hubballi, Dist:Dharwad.*



11. Manju S/o Anandgouda Patil, Age:39 years, Occ:Agriculture, R/o.Karadikoppa Village, Tq:Hubballi, Dist:Dharwad.
12. Madegouda S/o Anandgouda Patil, Age:45 years, Occ:Agriculture, R/o.Karadikoppa Village, Tq:Hubballi, Dist:Dharwad.
13. Smt. Neelawa D/o Anandgouda Patil, Age:48 years, Occ:Household work, R/o.Karadikoppa Village, Tq:Hubballi, Dist:Dharwad.
14. Smt. Laxmibai Goudappa Naik, Age:43 years, Occ:Household work, R/o.Goudappa Naik, Bilakundi Village, Tq:Gokak, Dist:Belagavi.
15. Smt. Savakka W/o Appasab Patil, Age:41 years, Occ:Household work, R/o.Appasab Patil, Teggihal Village, Tq:Saundatti, Dist:Belagavi.
16. Savita D/o Anandgouda Patil, Age:35 years, Occ:Household work, R/o.Karadikoppa Village, Tq:Hubballi, Dist:Dharwad.
17. Yallanagouda S/o Rajashekharagouda Patil, Age:49 years, Occ:Agriculture, R/o.Karadikoppa Village, Tq:Hubballi, Dist:Dharwad.



18. Smt. Kasturi W/o Shankaragouda Patil, Age:51 years, Occ:Household work, R/o.Bellikatti Village, Tq:Bailhongal, Dist:Belagavi.
19. Smt. Manjula W/o Appasab Patil, Age:43 years, Occ:Household work, R/o.Chikkamalligawad Village, Tq: & Dist:Dharwad.
20. Geeta D/o Rajashekharagouda Patil, Age:39 years, Occ:Household work, R/o.Karadikoppa Village, Tq:Hubballi, Dist:Dharwad.
21. Somashekhar S/o Venkanagouda Patil, Age:73 years, Occ:Agriculture, R/o.Karadikoppa Village, Tq:Hubballi, Dist:Dharwad.
22. Harishchandragouda S/o Krishnagouda Patil
Since deceased by his Lrs.
- 22a. Rohit S/o Harishchandragouda Patil, Age:35 years, Occ:Agriculture, R/o.Karadikoppa, Hubballi.
- 22b. Sukanya W/o Praveen Patil, Age:30 years, Occ:Household, R/o.Hulakoppa Village, Kalaghatagi.
23. Ashokgouda S/o Krishnagouda Patil, Age:74 years, Occ:Agriculture,



R/o.Karadikoppa Village,
Tq:Hubballi, Dist:Dharwad.

24. Vasantagouda S/o
Krishnagouda Patil, Age:69
years, Occ:Agriculture,
R/o.Karadikoppa Village,
Tq:Hubballi, Dist:Dharwad.

25. Smt. Sushilabai W/o
Kondura Patil, Age:63 years,
Occ:Household work,
R/o.Patagudi, Tq:Gokak,
Dist:Belagavi.

26. Smt. Shamalakka W/o
Venkanagouda Patil, Age:58
years, Occ:Household work,
R/o.Kurubagatt,
Tq:Saundatti, Dist:Belagavi.

(R.1 by Sri. R.M. Patil, Advocate,
R.2 to 7, 10 to 13, 9, 15 to 17,
19 to 25 -Exparte,
R.22(a) - Absent)

ORDERS

The petitioner has filed this petition under Order 9 Rule 13 R/w Sec.151 of C.P.C., seeking to set aside the exparte judgment and decree dated:31.01.2000 passed by Hon'ble the then Prl. Senior Civil Judge, Hubballi in O.S. No.124/1993, consequently to restore the said suit to contest it, along with application under Sec.5 of Limitation Act by condone the delay in filing the present petition.

Parties will be referred to as per their ranks, before the Trial Court, for the sake of convenience.



2. *The case of the petitioners in brief is that, the respondent No.1 herein had filed O.S. No.124/1993 on the file of the Hon'ble the then Principal Senior Civil Judge, Hubballi for partition and separate possession of his share alleging that the deceased Sri. Krishnagouda S/o Mallanagouda Patil was the owner of the schedule properties and in all the suit schedule properties, he had ½ share and in suit at schedule No.1 and 2 properties, 1/4th share in suit schedule Sl. No.3 to 5 and 1/6th share in the suit schedule Sl. No.6 properties by virtue of the registered Gift Deed dated:17.05.1971 executed by Smt. Chandravva W/o Hanumantgouda Patil. But in the said suit address for service of suit summons, notice and process of the defendant No.3 who is the petitioner herein was shown as Balanagouda S/o Basanagouda Patil, Age: Major, Occ:Agriculture, R/o.Karadikoppa Village, Tq:Hubballi, Dist:Dharwad. But, the present petitioner herein much prior to filing of the said suit and also till its disposal he was not residing at Karadikoppa and on the contrary he was working and residing at Sirsi. Despite knowing this fact the plaintiff therein got the summons to the said false address and colluding with the Bailiffs got the exparte decree against the petitioner. Therefore, the petitioner being aggrieved by the exparte judgment and decree dated:31.01.2000 passed in O.S. No.124/1993 files this petition for setting aside the*



above said judgment and decree on the following and among other grounds:

The petitioner was taken grounds to file the present petition is that he was not residing at the address which was shown in the plaint as on the date of filing of the suit and as on the date of the alleged service of summons, that the summons of the above case was not duly served upon the petitioner and the service which is alleged to have been effected is not at all a service under law.

Further taken contention that he was totally unaware of passing of the exparte judgment and decree under this petition till obtaining the all the records in O.S. No.124/1993 on the file of the Hon'ble Prl. Senior Civil Judge, Hubballi. That the exparte judgment and decree in question has gravely affected the right, title and interest in and over the properties therein.

Further, taken contention that the non appearance of the petitioner on the said date was neither intentional nor deliberate, but the same was due to non service of the suit summons against the petitioner. That the petitioner has got fair chance of success in the said suit. If the exparte judgment and decree is not set aside and the suit is not disposed off on merits the petitioner will be put to much loss and injustice which cannot be compensated in terms of money. On the contrary no loss or prejudice will be



caused to the respondents. Further, taken contention that an account of his illhealth and spread of Covid-19 there is delay in filing this petition. Therefore, separate application for condonation of delay is filed. Therefore, prayed for allow the petition.

3. The Court has registered the petition and issued notices to other side. The respondent No.1 have appeared through his Counsel and not filed any objections, the respondent No.2 to 26 are absent before the Court.

4. The Petitioners in order to substantiate their contentions, Petitioner got himself examined as P.W.1 and has got marked 4 documents as Exs.P.1 to P.4. On the otherhand, no evidence and no documents.

5. Heard arguments.

6. The points for consideration are that:

- 1. Whether the petitioners made out sufficient grounds to condone the delay in filing the present petition as per I.A. No.I?*
- 2. Whether the Petitioners shows that, they were having sufficient cause/ reason, which had precluded them from attending the Court proceedings in O.S. No.124/1993 ?*
- 3. What order ?*



7. *The above point No.1 and 2 are answered in the Negative and point No.3 as per final order, for the following:*

REASONS

8. **Point No.1 and 2:** *The Petitioners have filed this Petition seeking setting aside of exparte Judgment and Decree passed in O.S. No.124/1993 dated:31.01.2000.*

This Petition is filed by the Petitioners U/O IX Rule 13 R/w Sec 151 of C.P.C.

As per Order IX Rule 13 of CPC,

The defendant, may apply under Order IX, Rule 13, for an order to set aside the ex-parte judgment at any period between the date of the judgment and the thirtieth day from the date of the decree or where the summons was not duly served, from the date on which he has knowledge of the decree.

As per Section 151 of C.P.C., inherent powers are to be exercised by the Civil Courts of Law, in two circumstances, viz.,

- a) Inorder to prevent abuse of process of law;*
- b) to achieve the ends of justice.*

9. *In the instant case, the Petitioner has contended that, the respondent No.1 herein had filed O.S. No.124/1993 on the file of the Hon'ble the then*



Principal Senior Civil Judge, Hubballi for partition and separate possession of his share alleging that the deceased Sri. Krishnagouda S/o Mallanagouda Patil was the owner of the schedule properties and in all the suit schedule properties, he had ½ share and in suit at schedule No.1 and 2 properties, 1/4th share in suit schedule Sl. No.3 to 5 and 1/6th share in the suit schedule Sl. No.6 properties by virtue of the registered Gift Deed dated:17.05.1971 executed by Smt. Chandravva W/o Hanumantgouda Patil. But in the said suit address for service of suit summons, notice and process of the defendant No.3 who is the petitioner herein was shown as Balanagouda S/o Basanagouda Patil, Age: Major, Occ:Agriculture, R/o.Karadikoppa Village, Tq:Hubballi, Dist:Dharwad. But, the present petitioner herein much prior to filing of the said suit and also till its disposal he was not residing at Karadikoppa and on the contrary he was working and residing at Sirsi. Despite knowing this fact the plaintiff therein got the summons to the said false address and colluding with the Bailiffs got the exparte decree against the petitioner. Therefore, the petitioner being aggrieved by the exparte judgment and decree dated:31.01.2000 passed in O.S. No.124/1993 files this petition for setting aside the above said judgment and decree on the following and among other grounds:



The petitioner was taken grounds to file the present petition is that he was not residing at the address which was shown in the plaint as on the date of filing of the suit and as on the date of the alleged service of summons, that the summons of the above case was not duly served upon the petitioner and the service which is alleged to have been effected is not at all a service under law.

Further taken contention that he was totally unaware of passing of the exparte judgment and decree under this petition till obtaining the all the records in O.S. No.124/1993 on the file of the Hon'ble Prl. Senior Civil Judge, Hubballi. That the exparte judgment and decree in question has gravely affected the right, title and interest in and over the properties therein.

Further, taken contention that the non appearance of the petitioner on the said date was neither intentional nor deliberate, but the same was due to non service of the suit summons against the petitioner. That the petitioner has got fair chance of success in the said suit. If the exparte judgment and decree is not set aside and the suit is not disposed off on merits the petitioner will be put to much loss and injustice which cannot be compensated in terms of money. On the contrary no loss or prejudice will be caused to the respondents. Further, taken contention that an account of his illhealth and spread of Covid-



19 there is delay in filing this petition. Therefore, separate application for condonation of delay is filed.

10. In this case on careful perusal of the documents produced by the Petitioner, more specifically at Ex.P1/ Ordersheet, it clearly reveals that the Plaintiff has taken suitable steps against defendant No.3 which was served on defendant No.1 dated:21.12.1993. On perusal of the cause title of the plaint it is noticed to the Court that the defendant No.1 is none other than the brother of the defendant No.3. As per the ordersheet, it is mentioned that summons to defendant No.1, 2, 4 and 7 served, called out absent, hence they placed exparte. Ex.P.3 is the certified copy of the plaint in O.S. No.124/1993. On perusal of the same it is noticed to the Court that the address of the defendant No.3 is the address of the defendant No.1 i.e., both are one and the same. Further, Ex.P.2 is the certified copy of the decree and Ex.P.4 is the Certificate issued by the Executive Engineer, KEB, Sirsi, discloses the fact that the defendant No.3 who is the retired mechanic was completed their service from 01.07.1981 to 31.07.2015 and as per the request of the defendant No.3 / present petitioner this certificate has been issued, but it is not the residing address of the present petitioner, only the working address. Hence, on the basis of this document we cannot come to the



conclusion that he is not residing at the address mentioned in the plaint.

11. On careful perusal of the entire materials available on record, it is noticed that the suit summons served among only on defendant No.1 and not personally on defendant No.3, who is the present petitioner. The court must examine the nature of the service and the relationship between the defendants. Admittedly, defendant No.3 is the brother of defendant No.1. As a general rule, each defendant is entitled to service of summons. Service on defendant No.1 does not automatically amount to valid service on defendant No.3. If defendant No.3 was a major person and no summons was personally served upon him and there was no valid substituted service ordered by the court, he may legitimately contended that summons were not duly served.

However, that does not automatically result in allowing the petition. Even where summons were not duly served, the petition must establish that he had no knowledge of the suit or decree. The date on which he first acquired knowledge of the decree. That the petition was filed within 30 days from such knowledge or that sufficient cause exists for any further delay. The crucial difficulty here is that the decree is of 31.01.2000, whereas the petition is filed in the year 2022. Even assuming that summons were



not duly served on Defendant No.3, The court is still entitled to ask, how did he remain unaware of the decree for about 22 years? When exactly did he acquire knowledge? What material is produced to prove that date of knowledge? Was the decree acted upon during all these years? Were mutation entries, possession proceedings, revenue records, Execution proceedings or other public acts undertaken pursuant to the decree, A mere statement that I came to know recently is generally insufficient. The suit records disclose that the summons was duly served upon the brother of the defendant No.3. Then the burden on the petitioner becomes even heavier. Though the petitioner contends that summons were not personally served upon him, mere absence of personal service is not sufficient to set aside an ex parte decree passed more than two decades ago. The petitioner has failed to place satisfactory material showing the exact date of knowledge of the decree and has not explained the erroneous delay of about 22 years. Therefore, even assuming some defect in service, the petitioner has failed to establish grounds warranting exercise of discretion under Order IX Rule 13 of CPC.

Merely because the respondents have remained absent in the miscellaneous proceedings does not mean that the petition must be allowed. Even in an uncontested case, the court must independently



satisfy itself regarding limitation, sufficient cause, due service of summons, and bonafide of the applicant. The petitioner must succeed on the strength of his own evidence and not on the weakness or absence of the respondents.

The legal position is that under Order IX Rule 13 of CPC, an ex parte decree may be set aside if summons were not duly served or the defendant was prevented by sufficient cause from appearing when the suit was called. Article 123 of the Limitation Act prescribes 30 days from the date of decree or 30 days from the date of knowledge. Where summons were not duly served. Therefore, mere alleging that summons were not served is not enough. The petitioner must establish that he was not residing at the address where summons were sent. Admittedly, Ex.P.4 does not depicts the residential address of the petitioner. When and how he first acquired knowledge of the decree? Why he remained unaware for more than 22 years? In the present case, admittedly the decree was passed on 31.01.2000. The petition under Order IX Rule 13 CPC was filed only in the year 2022 after about 22 years. The petitioner merely contends that he was not residing at the address shown in the plaint and he had no knowledge of the decree. Such a bald assertion without satisfactory evidence explaining the extraordinary delay of 22 years cannot automatically



entitle him to relief. The Supreme Court has repeatedly held that though courts should adopt a liberal approach in condonation matters. A party seeking to set aside an *ex parte* decree after an inordinate delay must satisfactorily explain the delay and establish *bona fides*. Moreover, the petitioner has not produced convincing probable conclusion evidence regarding his residence elsewhere during the suit period. Improper service of summons, the exact date and source of knowledge of the decree, and reasons for remaining silent for about 22 years. Therefore, the court would be justified in holding that a reasoned order may state that an *ex parte* decree of the year 2000 cannot be reopened after more than two decades on vague and unsupported allegations of non-service particularly when the petitioner has failed to establish the date of knowledge and explain the enormous delay satisfactory.

Therefore, this Court is of the opinion that the petition is barred by limitation and devoid of sufficient cause and consequently dismissing both the delay condonation application and the petition under Rule 9 Rule 13 of CPC. Hence, **Point No.1 and 2 are answered in the Negative.**

12. **Point No.3:** For having answer Point No.1 in the Negative, I proceed to pass the following:



ORDER

The I.A. No.II filed by the petitioner under Sec.5 of Limitation Act is hereby dismissed.

The petition filed under Order IX Rule 13 r/w.Sec.151 of C.P.C. is hereby dismissed.

No order as to costs.

*(Dictated to the Stenographer, transcribed and computerized by her, script corrected directly on computer and then pronounced by me in the Open Court on this the **09th day of June, 2026**)*

*(Smt. Sarvamangala K.M.)
I Addl. Senior Civil Judge & J.M.F.C.,
Hubballi.*

ANNEXURE

1. List of witnesses examined for the Petitioner/s:

P.W.1 : Sri. Balanagouda S/o Basanagouda Patil.

2.List of documents exhibited for the Petitioner/s:

Ex.P.1 : Certified copy of Order sheet in O.S No.124/1993.

Ex.P.2 : Certified copy of Decree in O.S No.124/1993.

Ex.P.3 : Certified copy of plaint in O.S No.124/1993.

Ex.P.4 : Confirmation Letter dated:30.07.2025.

3.List of witnesses examined for the respondent/s:

-NIL-



4. List of documents exhibited for the Respondent/s:

-NIL-

(Smt. Sarvamangala K.M.)
I Addl. Senior Civil Judge & J.M.F.C.,
Hubballi.