

**IN THE COURT OF THE II ADDITIONAL SENIOR CIVIL
JUDGE AND J.M.F.C. HUBBALLI**

Present:- Smt.Deepa G Manerkar,
B.Com. LL.B, (Spl.)
II Addl. Senior Civil Judge & J.M.F.C.,
Hubballi.

Dated this the 11th day of March 2026

FDP No.25/2019

Smt. Indira W/o Mallikarjun Savanur of Hubballi

...petitioner/s

-Versus -

Smt. Suman W/o Kashinath Hutagikar and others

...Defendant/s

IA.NO.IX TO XI

Smt. Indira W/o Mallikarjun Savanur of Hubballi

APPLICANT/ petitioner

Versus -

Smt. Suman W/o Kashinath Hutagikar and others

OPPONENT/ RESPONDENTS

COMMON ORDERS ON I.A.NO.IX TO XI

IA No.IX to XI are filed under Order 22 Rule 4, under Order 22 Rule 9(2) of CPC and under Sec.5 of Limitation Act by the counsel for the petitioner to bring the LR's of deceased respondent No.11 as respondent No.11(a) to (e) on record by setting aside abatement order by condoning the delay.

2. In the affidavit accompanying the I.As., it is commonly sworn by the petitioner that, the Respondent No.11 has breathed her last on 12-05-2021. He was not aware of the death of the respondent No.11. In the month of March 2025 he came to know when he had been to attend the family function of his close relatives. Soon after, he met his advocate and informed the same. His advocate instructed him to collect particulars of all the legal representatives of deceased respondent No.11. Thereafter, he ascertained the particulars of legal representatives of deceased respondent No.11. During this process he could not bring the legal representatives on record within a period of 90 days and as

such the said proceedings have abated in respect of respondent No.11. The non filing of an application for bringing the legal representatives of deceased respondent No.11 within the period of limitation is a bonafide one. The right sue does not survive against the surviving respondents alone. Under these circumstances, bringing of legal representatives of respondent No.11 on record is very much necessary. If the present application is allowed no harm will be caused to the other side. On contrary if the same is not allowed the petitioners will be put to untold hardship and irreparable loss. Hence, prayed to allow the I.As.

3. The respondents have not filed any objections to IA.No.IX to XI.

4. Heard arguments from petitioner side counsel.

5. The points that arise for my consideration is:-

1. Whether the present applications deserves to be allowed?

2. What Order ?

6. My findings on the above points as follows :

Point No.1 : In the Affirmative

Point No.2 : As per final order

for the following :-

REASONS

7. **Point No.1:-** As per the petitioner, the respondent No.11 expired on 12-05-2021. The petitioner was not aware of the death of the respondent No.11. In the month of March 2025 he came to know when he had been to attend the family function of his close relatives. Soon after, he met his advocate and informed the same. His advocate instructed him to collect particulars of all the legal representatives of deceased respondent No.11. Thereafter, he ascertained the particulars of legal representatives of deceased respondent. Hence there is delay in bringing the LR's on record. The LRs of respondent No.11 i.e. respondent No.11(a) to (e) have not filed objections. It is pertinent to make note the present petitioner is filed for drawing up of final decree in terms of preliminary decree

passed in OS.No.264/2017. The said suit was filed for relief of partition and separate possession. In the said suit the plaintiff is allotted 1/12th share in suit properties. Since the right to sue survives against legal representative respondent no.11 i.e., respondent no.11(a) to (e) and present petition being continuation of original suit the present applications deserves to be allowed. So also the petitioner has made out grounds to condone delay. Since there is delay in filing the present petition some cost has to be imposed to compensate the other side. As such about point is answered in the affirmative.

8. **Point No.2** : In view of the findings and answer to point No.1, this court proceeds to pass the following :-

ORDER

IA No.IX to XI are filed under Order 22 Rule 4, under Order 22 Rule 9(2) of CPC and under Sec.5 of Limitation Act filed by the counsel for the petitioner are hereby allowed on cost of Rs.700/- each.

As a result petitioner counsel is permitted to bring Lrs of respondent No.11 on record.

To carry out amendment and for amended petition.

(Direct dictated to stenographer on computer, typed by her, corrected and signed by me & then pronounced in the open court on this the 11th day of March 2026.)

Sd/-
(Smt. Deepa G Manerkar)
II Addl. Senior Civil Judge and JMFC
Hubballi.