

KAHS010037632025



**BEFORE THE III ADDL. DISTRICT & SESSIONS COURT AT
HASSAN**

**PRESENT: Sri. Ananda, B.A.L., LL.B., LL.M.
III Additional District and Sessions
Judge, Hassan.**

Dated this 12th day of January, 2026

R.A. No.72/2025

Appellant/s : Jagadisha
(By Sri. K.L.P., Advocate)
V/s
Respondent/s : M.M. Prakash and others
(By Sri. C.B., Advocate)

**:ORDER ON I.A. NO.I FILED BY THE APPELLANT UNDER
ORDER 41 RULE 23(A) of C.P.C. R/w Sec.5 OF LIMITATION
ACT**

I.A.I has been filed by the appellant seeking condonation of delay of 6 days in preferring the above appeal.

2. The appellant has filed an application/I.A.No. I and has sworn to an affidavit, wherein, it is contended by the appellant

that he has filed the present appeal challenging the judgment and decree passed by the learned Senior Civil Judge & JMFC Court, Arakalagud, in O.S. No. 7/2018 dated 08.04.2025. He further submits that though O.S. No. 7/2018 was decided on 08.04.2025, he could not prefer the appeal within the prescribed time due to ill health, old age and related difficulties. Owing to these reasons, he was unable to collect the necessary documents, approach his counsel and take steps to file the appeal earlier, which resulted in the delay in filing the present appeal. He further submits that the delay caused in filing the appeal is neither intentional nor deliberate, but occurred due to bona fide reasons and unavoidable circumstances. If the delay is not condoned, the appellant would be put to irreparable loss and injury. He further submits that no prejudice, loss or injustice would be caused to the respondents if the delay is condoned, whereas the matter would be decided on its merits in the interest of justice. Hence, the appellant prays to condone the delay in filing the appeal, in the interest of justice.

3. Upon service of notice, the respondent No. 1 appeared before the court through their counsel. However, the respondent No.2 to 9 remained absent.

4. The learned counsel for Respondents 1 has filed objections

to I.A. No. I, contending that the averments made in the affidavit filed in support of the said I.A., to the effect that the Appellant did not file the appeal against the judgment dated 08-04-2025 passed in O.S. No. 7/2018 on the file of the learned Senior Civil Judge, Arakalagudu, on account of ill-health, old age, and inability to collect necessary papers and approach his counsel in time, and that the delay is neither intentional nor deliberate but occurred due to bona fide reasons, are false, incorrect, and self-serving statements. It is further submitted that the Appellant has not produced any documentary evidence whatsoever to substantiate his alleged ill-health or the time purportedly consumed in collecting the necessary papers, and therefore the said contentions cannot be believed. It is further submitted that, since there is a delay in filing the above appeal, the Appellant is required to explain the said delay by producing cogent and convincing evidence, failing which the delay cannot be condoned. It is further submitted that there are no bona fides in the I.A. filed by the Appellant, and as such, he is not entitled to the relief sought therein. All other averments made in the I.A. and the accompanying affidavit, insofar as they are contrary to the contents of this objection statement, are denied as false,

untenable, and liable to be rejected.

5. Counsel for the appellant did not address his arguments on I.A. No.1. I have heard arguments of counsel for the respondent No.1 and perused the materials placed on record.

6. Following points that arise of my consideration are:

1. *Whether Appellant has made out sufficient grounds to allow the application, as prayed for?*

2. *What order?*

7. My answer to the above points is:

*Point No.1 : In the **Affirmative**,*

Point No.2 : as per final order, for the following

::REASONS::

8. **Point No.1:-** The present appeal has been preferred by the appellants challenging the judgment and decree dated 08-04-2025 passed in O.S. No. 7/2018 by the Court of the Senior Civil Judge and JMFC, Arakalagudu. The said suit was instituted by the respondent No.1 herein for the relief of partition and separate possession. The trial court, after evaluating the pleadings and evidence placed on record, decreed the suit in favour of the plaintiffs/respondent No.1 and consequently, the plaintiff was entitled for 1/6th share in suit item No. 1, 2 and 5 of the suit

schedule properties. Aggrieved by the said judgment and decree, the appellant has preferred the instant appeal and has also filed I.A. No. I under Section 5 of Limitation Act, seeking condonation of a delay of 6 days in filing the present appeal.

9. It is evident that the appellant has preferred the present appeal challenging the judgment and decree dated 08-04-2025 passed in O.S. No. 7/2018 on the file of the Senior Civil Judge and JMFC, Arakalagudu. On careful consideration of the rival contentions and the material placed on record, it is to be noted that the delay involved is only 6 days, which is minimal in nature. The explanation offered by the appellant appears to be plausible and reasonable, having regard to his age and the circumstances pleaded. It is well settled that, while considering an application under Section 5 of the Limitation Act, the Court is required to adopt a liberal and justice-oriented approach, particularly when the delay is short and not indicative of any mala fides or deliberate negligence. Though the appellant has not produced medical documents, the same cannot be treated as fatal in the facts and circumstances of the case, especially when the delay is insignificant and no material is placed on record by the respondent to show that the appellant had deliberately delayed

the filing of the appeal. The objections raised by Respondent No.1 are largely technical in nature and do not outweigh the cause shown by the appellant.

10. Further, refusal to condone the delay would result in foreclosure of the appellant's right to challenge the judgment and decree, whereas condoning the delay would only enable the matter to be adjudicated on merits. No serious prejudice or irreparable loss would be caused to the respondents if the delay is condoned. In view of the above discussion, this Court is of the considered opinion that the appellant has shown sufficient cause within the meaning of Section 5 of the Limitation Act, and the delay of 6 days deserves to be condoned in the interest of justice. Accordingly, I answer point No. 1 in the **affirmative**.

11. Point No.2:- For the reasons stated above, I proceed to pass the following:

::O R D E R::

*I.A. No. 1 filed by the appellant under order
XLI Rule 23(A) of C.P.C. R/w Sec.5 of the
Limitation Act, is hereby allowed.*

*The delay of 6 days in preferring the present
appeal against the judgment and decree dated*

08-04-2025 passed in O.S. No. 7/2018 on the file of the learned Senior Civil Judge & JMFC, Arakalagudu, is hereby condoned.

Consequently, the appeal shall be proceeded with in accordance with law.

*(Dictated to Stenographer, directly on computer typed by him taken out print, corrected by me and then pronounced in the Open-Court on **12th day of January, 2026**)*

[Sri. Ananda]

*III Additional District & Sessions
Judge, Hassan.*