

**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC,  
JEWARGI.**

PRESENT : Smt. Tayyaba Sultana, B.A., LL.B.,  
Senior Civil Judge & JMFC.,  
Jewargi.

**R.A.No.5/2025**

**DATED THIS THE 10<sup>th</sup> DAY OF NOVEMBER-2025**

**APPELLANT /DEFENDANTS:**

1. Smt. Dyavamma W/o Shamaraya  
(D/o Late Hajappa),  
Age: 55 years, Occ: Agricultural  
and household,  
R/o Shahabad, Taluk Shahabad,  
District Kalaburagi.
2. Smt. Gangabai W/o Tiwari (D/o  
Late Hajappa),  
Age: 53 years, Occ: Agricultural  
and household,  
R/o Shahabad, Taluk Shahabad,  
District Kalaburagi.
3. Smt. Kantamma W/o Krishnappa  
(D/o Late Hajappa)  
Age: 42 years, Occ: Agriculture  
and household,  
R/o Shahabad, Taluk Shahabad,  
District Kalaburagi.

(By Sri C. S. P, Adv.,)

**Versus**

**RESPONDENT/ PLAINTIFF:**

Smt. Parvati W/o Iranna (D/o Late Hajappa)  
Age: 44 years, Occ: Agricultural and household,  
R/o Shahabad, Taluk Shahabad,  
District Kalaburagi.

(By Sri B. N. K. Adv.,)

**PARTIES TO I.A.NO.I****APPLICANT:**

Smt Dyavamma and other

(By Sri C. S. P, Adv.,)

**//Vs//**

**RESPONDENT:**

Smt. Parvati W/o Iranna (D/o Late Hajappa)

(By Sri B. N. K. Adv.,)

|                                                                                 |          |                                                      |
|---------------------------------------------------------------------------------|----------|------------------------------------------------------|
| <b><i>Provision under which the application is filed.</i></b>                   | <b>:</b> | <b><i>Under Section 5 of the limitation Act.</i></b> |
| <b><i>The date on which the application is filed.</i></b>                       | <b>:</b> | <b><i>30-01-2025</i></b>                             |
| <b><i>Number of the Application.</i></b>                                        | <b>:</b> | <b><i>I.A.No.I</i></b>                               |
| <b><i>The date on which the objection is filed by respondent.</i></b>           | <b>:</b> | <b><i>19-08-2025</i></b>                             |
| <b><i>The date on which the orders were passed on the said application.</i></b> | <b>:</b> | <b><i>10-11-2025</i></b>                             |

**ORDER ON IA.No.I**

1. The present application is filed by the appellants under Section 5 of Limitation Act seeking to condone the delay of 112 days, to meet the ends of justice.
2. In the affidavit filed along with the application, the appellant No.3 has contended that, the trial Court without according roper

opportunity and decreed the suit in a hasty manner as ex parte, which is not sustainable either in law or on facts. The grounds mentioned in the appeal may be read part and parcel of this IA so as to avoid repetition of facts. The appellant is a poor person and due to death of the defendant No.1 who is the mother of the appellants could not contest the case and due to that the case was judgment and decreed as ex parte against the appellants and not approached the advocate on time and has no knowledge regarding the filing of Regular Appeal and they could not consult the counsel, they came to know regarding the filing of the Regular Appeal recently. Therefore they have to arrange the amount for the same. Therefore the delay of some days caused in filing the said appeal. The delay caused in filing the appeal is not intentional but for the above said valid reasons. That the appellant has a good case on merits and there are more chances of succeeding in the above appeal. Therefore, this Court is pleased to look into the matter on merit and condone the delay caused in filing the above said appeal. If the delay is not condoned, great hardship and prejudice will be caused to the appellant, which cannot be compensated in terms of money. On the other hand, no hardship or prejudice will be caused to the other side. Hence, prays to allow the application.

3. On issuance of notices to the respondent, the respondent appeared through his counsel and filed objections to I.A.I wherein it is contended that the application filed by appellant is not maintainable in law and there is no any true and sufficient grounds stated by appellants. The trial Court give to much time to lead the evidence to the appellants but they have not proceed with case, it is not correct in law to say that the trial Court has not give time to them lead the case. Hence, the appellants have need to be proves the facts. There is no any grounds mad out by the appellants to allow the appeal. Hence the appeal is liable to be dismiss. It is not correct to say that the appellant are poor persons and due to death of the defendant No.1 who is the mother of the appellants could not contest the case and not approached the advocate on time and has no knowledge regarding the filing of regular appeal and they could not consulted the counsel they came to know regarding the filing of the appeal recently. Therefore they have to arrange the amount for the same. There is no any specific date when the got knowledge of the decree of the suit. They have so any single words that why they have not contest the case before the lower and it is not acceptable on account of death of their mother they have not contest the case and it is not a ground to allow the application.

The appellants have strictly need to be proves the fact which narrated in the affidavit. As per law the appellants have need to explain delay each and every day to the Court but the appellants have filed to do so. Therefore, prayed to reject the application.

4. In order to prove their contention the appellant No.3 got examined herself as PW1. On the other hand the respondent has not lead any evidence.

5. Heard the arguments.

6. The following points arises for my consideration:-

1. Whether the appellants have made out sufficient grounds for condonation of delay of 112 days in filing this application?

2. What order?

7. My findings to the above points, are as follows:

Point No.1 : In Affirmative,

Point No.2 : As per final order for the following:

**:REASONS:**

8. **Point No.1:-** The appellants have filed this appeal being aggrieved by the judgment and decree passed in OS

No.128/2022 dated 09-08-2024 by the Civil Judge and JMFC at Jewargi against the defendants in the suit for partition.

9. Learned counsel for the respondent has argued that the trial Court give to much time to lead the evidence to the appellants but they have not proceed with case, it is not correct in law to say that trial Court has not give time to them lead the case and it is not acceptable on account of death of their mother they have not contest the case and it not a ground to allow the IA, same is liable to be rejected'.
10. It is contended by the appellant No.3 in her I.A., accompanying affidavit that, the plaintiff filed the suit against them, which came to be decreed, but the delay is not intentional or diligent one. PW.1/appellant in her cross-examination, a suggestion was put to the PW.1 that the defendant is her sister. She admitted she will be represented in the suit filed by her sister through their mother and sisters. It has been 2 years and a half months since her mother passed away. She admitted that there was plenty of time to appeal after her mother passed away. It is contended by the P.W.1 in her affidavit that, they are a poor persons and due to death of the defendant No.1 who is the mother of the appellants could not contest the case and due to that the case

was judgment and decreed as exparte against the appellants and not approached the advocate on time and has no knowledge regarding the filing of Regular Appeal and they could not consulted the counsel, they came to know regarding the filing of the Regular Appeal recently. Therefore they have to arrange the amount for the same. Considering all the facts and circumstance of the case, this court is of the opinion that, the present application has to be allowed to avoid multiplicity of proceedings and to decide the matter in controversy conclusively and in the interest of justice and equity, I proceed to answer point No.1 in Affirmative.

11. **Point No.2:-** In view of the above discussion, I proceed to pass the following:

**::ORDER::**

I.A.No.I filed by the appellants Under Section 5 of Limitation Act, is hereby allowed on cost of `5,000/- payable to the respondent.

(Smt. Tayyaba Sultana)  
Senior Civil Judge  
& JMFC., Jewargi.