

ORDER ON I.A.NO.I to III

I.A.No.I is filed by the applicant/plaintiff U/Sec.5 of Limitation Act, to condone the delay in filing application to set aside abatement order against the defendant No.3.

2. IA No.II is filed by the applicant/plaintiff under Order XXII Rule 9 R/w Section 151 of CPC to set aside the abatement of the suit against defendant No.3.

3. I.A.No.III is filed by the applicant/plaintiff under Order XXII Rule 4 R/w Section 151 of CPC with a prayer to bring the legal heirs of deceased defendant No.3.

4. All these applications are supported by affidavit of plaintiff. In the affidavits, it is stated that, the plaintiff has filed suit against the defendants for the relief of partition and separate possession. That, during pendency of the suit, the defendant No.3 expired leaving behind the proposed parties as his legal heirs. The plaintiff stated that, defendant

No.3 died on 31.10.2024. There is delay in bringing legal heirs of defendant No.3 on record as well as filing application for setting aside abatement of suit. It is further stated that, the delay is not deliberate or intentional one. The heirs of deceased defendant No.3 are necessary and proper parties to this suit for adjudication of dispute. Hence, on these grounds, it is prayed for allowing these applications.

5. The advocate for defendants have not filed objection to the application.

6. On receipt of notice of these applications, the proposed parties have appeared before Court through their Counsel and submitted no objection to I.A.I to III.

7. Heard both side and perused the records.

8. The plaintiff has filed this suit against the defendants for the relief of partition and separate possession.

9. It is stated by the plaintiffs that, delay in bringing the L.Rs of defendant No.3 record is not intentional one. However, the reason in filing the application is beyond his control, as such they could not file the application to bring the L.Rs. of defendant No.3. If the LR's of the deceased defendant No.3 is not brought on record the plaintiff will be put to loss. On the contrary, except delay, relationship of the proposed parties with deceased is not disputed by the defendants. The suit is being one for partition and separate possession, the LR's of deceased being wife and children are necessary parties to the suit. Hence, this court is of the considered opinion that, plaintiff has made out grounds for condoning the delay in bringing legal representatives of defendant No.3. Hence, this court proceed to pass the following:-

ORDER

I.A.Nos.I to III filed by the

applicant/plaintiff U/sec.5 of Limitation Act, U/o. XXII Rule 9 R/w Section 151 of CPC and U/Sec. XXII Rule 4 R/w Section 151 of CPC are hereby allowed.

Delay in filing application for setting aside abatement order in bringing L.Rs. of defendant No.3 is hereby condoned and abatement of suit against the LR's of defendant No.3 is set aside.

The plaintiff is permitted to bring LR's of defendant No.3 as defendant No.3(a) to (d).

Further, plaintiff is directed to make necessary amendment and to furnish the amended plaint within 14 days as required under the provisions of Order VI Rule 18 of CPC.

For amendment.

Call on:

(Dictated to the Stenographer directly on the computer typed by him, corrected and pronounced by me in the open court on this the 19th day of September, 2025).

**Prl. Civil Judge & JMFC.,
Nagamangala.**