

KAMS010054792025



**IN THE COURT OF THE II ADDL. DISTRICT AND
SESSIONS JUDGE, MYSURU**

Dated this the 25th day of June 2026

:: PRESENT ::

Sri. Mohan Badagandi,

B.Com., LL.B, (Spl.).

**II Addl. District & Sessions Judge,
Mysuru.**

RA/127/2025

APPELLANT

::

Mr. B.G. Nataraju,
S/o. Late B.R. Gurumurthy,
Aged about 49 years,
R/at. Benakanahalli Village,
Sosale Hobli,
T. Narasipura Taluk,
Mysuru District.

(By : Sri. B.H.G., Adv.,)

V/s

RESPONDENTS::

1. Smt. Shylaja,
D/o. Late B.R. Gurumurthy,
W/o. Mr. Shivananda,
Aged about 46 years,
R/at. No.158, 11th Cross,
1st Main, Amrutheshwara Nagara,
Belawadi Post, Mysuru-18.
2. Smt. Kempammani,
Dead by LRs
Smt. Shylaja
(Already on record as R1)

(R1 By : Sri. K.M.K., Adv.,)

Parties to I.A.No.II

APPLICANT/s : B.G. Nataraju Appellant

V/s

OPPONENT : Smt. Shylaja and another
..... Respondents

ORDERS ON I.A.No.II

I.A.No.II is filed under Section 5 of Limitation Act by the Appellant praying to condone the delay of 64 days in filing the appeal.

2. In support of I.A.No.II, the Appellant filed an affidavit stating that he filed appeal against the Respondents challenging the judgment and decree passed in O.S.No.09/2013 dated 02.05.2025 on the file of Sr.Civil Judge and JMFC., at T.Narasipura, for the relief of Declaration and Partition. After his evidence, he was unable to contact his counsel, after argument judgment was delivered and the same was not communicated, since he was suffering from ill-health, he was not able to meet his counsel on time due to which copy was not applied in time. After came to know the judgment and decree, immediately, he informed his counsel to apply

certified copies of judgment and decree on 11.06.2025 and same was delivered on 18.06.2025, immediately he preferred the appeal.

3. Further submitted that due to his ill-health, he could not able to go to advocate's office to prefer the appeal well within time, hence there is a delay for the above bonafide reasons and not with any intention. The delay is due to his ill-health and except him no other person are in the family to move the case. Hence, he may be permitted to proceed in the matter.

4. Notice served on the Respondents. Even the Respondent No.1 appeared through her counsel, she has not opted to file the objections. Hence, objections was taken as not filed.

5. The Appellant in order to establish his case has led evidence as PW.1.

6. Heard arguments of counsel for Appellant.

7. The points that arise for my consideration as under:-

1. Whether the Appellant has made out just and reasonable grounds to condone the delay as prayed for ?
2. What Order ?

8. My answer to the above points are as under :

Point No.1 : In the **Affirmative**,
Point No.2 : As per the final order
for the following:

R E A S O N S

9. **POINT NO.1:** The material on record would go to show that the Respondent No.1 filed suit in O.S.No.9/2013 for Declaration and Partition and the Appellant is the aggrieved party of the impugned order passed by the Sr.Civil Judge and JMFC., T.Narasipura. The Appellant has belatedly filed the appeal on various grounds as stated in the appeal memo. The arguable points have been made out by the Appellant.

10. The Appellant has been examined as PW.1 he reiterates the contents of application. The oral testimony on oath in affidavit remains unchallenged since the Respondents have not cross-examined him and filed objections to the application as well. He has contended that due to his ill-health he could not able to contact his counsel and applied for the certified copies in time to prefer the appeal well within time. There is a 64 days delay according to the Appellant to prefer this appeal. 64 days are not the abnormal delays. Further, there is no necessity to offer the explanation for each and every hours and days for delay. The delay can be compensated by imposing fine on Appellant. If the fine of Rs.500/- is imposed it will meet the ends of justice. The Hon'ble Apex Court and Hon'ble High Court of Karnataka have repeatedly held that delay can be condoned if the sufficient causes are made out. There is no material to disbelieve the oral testimony of PW.1. Further if the application is allowed, it helps to decide the question in the appeal on merit and it would help the Respondents

also, then it attains the logical end. On perusal of the materials on record and contents of the PW.1 without much discussion, I am of the opinion that Appellant has made out sufficient grounds to allow the application. Accordingly, I answer Point No.1 in the **Affirmative**.

11. **POINT NO.2:-** In the result, I proceed to pass the following :

ORDER

The I.A.No.II filed by the Appellant under Section 5 of the Limitation Act is hereby **ALLOWED on cost of Rs.500/-**.

Delay in filing present Appeal is condoned.

[Directly, dictated to the Stenographer Gr-III, on computer, corrected and then pronounced by me in the open Court on this the **25th day of June 2026**]

[Mohan Badagandi]
II Addl. District & Sessions Judge,
Mysuru.