

KAMS300004632023



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE  
AND JMFC AT HUNSUR**

**Present:** Smt.Anitha, B.A. (Law) L.L.B,  
Addl. Senior Civil Judge & JMFC.,  
Hunsur.

**Dated this the 14<sup>th</sup> day of October 2024.**

**RA No.21/2023**

Appellants: 1. Smt.Narmada Ben L.Patel  
W/o Late Lakkam Shi H.Patel,  
Aged about 57 years,  
2. Smt.Vanitha V.Patel,  
D/o Late Lakkam Shi H.Patel,  
Aged about 32 years,  
3. Sri.Deepak L.Patel,  
S/o Late Lakkam Shi H.Patel,  
Aged about 30 years,  
All are residing at Old B.M.Road,  
Near Hunsur Plywood Works,  
Hunsur City, Hunsur.

- V/s -

Respondents: 1. Sri.Israar, Since dead by his Lrs.,  
1(a). Smt.Thabasam, W/o Late Israar,  
Aged about 35 years,  
1(b). Master Fohil.S., S/o Late Israar,  
Aged about 13 years,  
1(c). Master Rehan, D/o Late Israar,

- Aged about 11 years,
2. Sri.Abrar, S/o Aris Mohammed,  
Aged about 40 years,
  3. Sri.Musanifa, Since dead by his L.Rs.,
  - 3(a). Smt.Nasima, W/o Late Musanifa,  
Aged about 52 years,
  - 3(b). Sri.Suhel, S/o Late Musanifa,  
Aged about 32 years,
  - 3(c). Smt.Sumaiya, D/o Late Musanifa,  
Aged about 30 years,
  4. Sri.Nisar Ahamed, S/o Khasim Saab,  
Aged about 50 years,
  5. Sri.Athique, S/o Hameed Khan,  
Aged about 60 years,
  6. Sri.Ashraf, Since dead by his L.Rs.
  - 6(a). Smt.Bathulunnissa, W/o Late Ashraf,  
Aged about 55 years,
  - 6(b). Sri.Abrar, S/o Late Ashraf,  
Aged about 35 years,
  - 6(c). Smt.Gulnaz, D/o Late Ashraf,  
Aged about 32 years,

No.6(a) to (c) are residing at Rehamath  
Mohalla, Bridge, Hunsur Town.

- 6(d). Sri.Thabarez, S/o Late Ashraf,  
Aged about 28 years, R/at Shabbir  
nagar, Hunsur Town.
7. Sri.Zameer, S/o Hammed Khan,  
Aged about 45 years,

All are residing at Behind Musafeer Khane,  
Bridge, Hunsur Town, Hunsur.

1.	Provision under which the applications are filed	:	Under Order 22 Rule 4 R/w Section 151 of CPC, under Order 22 Rule 9 R/w Section 151 of CPC and under Section 5 of Limitation Act
2.	Relief sought for	:	Implead the legal heirs of deceased respondent No.4
3.	The date on which the applications are filed	:	02.07.2024
4.	Number of the application	:	I.A.No.III to I.A.No.V
5.	The date on which the objection is filed by different opponents	:	Nil
6.	The date on which the orders passed on the said application	:	14.10.2024

**ORDERS PASSED ON I.A.NO.III to V**

Learned counsel for the appellants filed IA No.III under Order 22 Rule 4 R/w Section 151 of CPC to bring the legal heirs of the 4<sup>th</sup> respondent on record, IA No.IV under Order 22 Rule 9 R/w Section 151 of CPC to set aside the abatement of the appeal against the 4<sup>th</sup> respondent and IA No.V under Section 5 of Limitation Act to condone the delay in filing the LR application.

2. All the three applications are supported with the affidavits of appellant No.1 wherein he has stated that, they have filed this appeal against the judgment and decree passed by the trial court and during the pendency of the appeal respondent no.4 died on 04.05.2024 leaving behind his legal heirs. The right to sue

survives upon the legal heirs of the 4<sup>th</sup> defendant. Non filing of the application within the period of limitation is not intentional but due to bonafide reasons. It is also stated that, recently they came to know about the death of the 4<sup>th</sup> respondent. Hence, it is just and necessary to permit the appellants to file the LR application by setting aside the order of abatement of the appeal against the 4<sup>th</sup> respondent and to condone the delay in filing the LR application. Hence, prayed to allow the applications.

3. After filing of the applications this court issued notice to legal heirs of respondent No.4. In spite of service of notice the legal heirs of respondent No.4 not chosen to appear before the court and remained absent. Further, the learned counsel for 5<sup>th</sup> respondent prayed time to file the objection but not filed any objection in spite of providing sufficient opportunity.

4. Thereafter, heard arguments addressed by learned counsel for the appellants and perused the case papers. After hearing the arguments and on perusal of the case papers, the points that arise for consideration are as hereunder:

#### **POINTS**

1. Whether the appellants have made out sufficient grounds to condone the delay in filing the LR application?
2. Whether the appellants have made out sufficient grounds to set aside abatement of appeal against the 4<sup>th</sup> respondent?
3. Whether the appellants have made out sufficient grounds to bring the legal heirs of the 4<sup>th</sup> respondent on record?
4. What order?

5. The findings of the above points are as hereunder:

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

### **REASONS**

6. **Point No.1:** This is the appeal preferred by the appellants against the respondents challenging the judgment and decree passed by learned Principal Civil Judge and JMFC., Hunsur in OS No.147/2008 dated 18.10.2022. After filing of the appeal this court issued notice to all the respondents. In spite of service of notice except respondent No.5, other respondents remained absent. On 02.07.2024 the learned counsel for the appellants filed memo reporting the death of respondent No.4 and filed this application.

7. It is specifically stated that, on 04.05.2024 the 5<sup>th</sup> respondent died. The name and address of legal heirs of the 4<sup>th</sup> respondent is furnished. In spite of service of notice the legal heirs of 4<sup>th</sup> respondent remained absent. It shows that, they are having no objection to bring them on record. Furthermore, judgment and decree under challenge is for the relief of permanent injunction. The right to sue survives upon the legal heirs of respondent No.4. Therefore, this court comes to the conclusion that the applications filed by the appellants deserves to be allowed and the delay in filing the LR application needs to be condoned. Accordingly, Point No.1 to 3 are answered Affirmative.

8. **Point No.4:** In view of the reasons discussed above, this court proceeds to pass the following:

**ORDER**

IA No.III filed by the appellants under Order 22 Rule 4 R/w Section 151 of CPC, IA No.IV filed under Order 22 Rule 9 R/w Section 151 of CPC and I.A.No.V filed under Section 5 of Limitation Act are hereby allowed with costs of Rs.150/- each.

Accordingly, the delay in filing the LR application is hereby condoned. The abatement of the appeal against the 4<sup>th</sup> respondent is hereby set aside and the appellants are permitted to bring on record the legal heirs of the 4<sup>th</sup> respondent subject to payment of costs.

(Dictated to the Stenographer, transcribed and computerized by him on the computer, transcript corrected and pronounced by me in the open court on this the 14<sup>th</sup> day of October, 2024)

**(Anitha)**

Addl. Senior Civil Judge and JMFC.,  
Hunsur.