

KATK800007102015



**IN THE COURT OF PRL. SENIOR CIVIL JUDGE AND
J.M.F.C., AT SIRA.**

Dated this the 27th day of January 2026

PRESENT

**SMT. ZARIFA BANU A.R., B.A.L., LL.M.,
PRL. SENIOR CIVIL JUDGE AND J.M.F.C., SIRA.**

O.S.No.131/2015

Plaintiff : Seenappa and others

V/s

Defendants : Thimmaiah and another

PARTIES TO I.A.NO.27 to 29

Applicant : Saraswathamma and others.

..... LR's of plaintiff

V/s

Opponents : Thimmaiah and another

.....Defendants.



COMMON ORDERS ON I.A. No.27 to 29

I.A.No.27 to 29 are filed by the LR's plaintiff U/O 22 Rule 9, 22 Rule 3 of CPC and U/Sec.5 of the Limitation Act seeking permission to set-aside the abetment order passed if any in preferring the LR's application due to the death of deceased plaintiff and bringing them as the LR's of deceased plaintiff who died on 30.09.2023 and also to condone the delay if any in preferring the LR's application for the reasons stated in the annexed affidavits.

2. In the annexed affidavits the LR's plaintiff by name Saraswathamma has sworn in I.A.No.27 to 29 that, the deceased plaintiff No.1 was her husband, he along with the other plaintiffs have filed the above case against the defendants for relief's as sought in plaint . On thorough verification made by her it is reliably learnt in her house some Xerox documents of this case paper were traced recently and immediately enquired the matter before this court and noticed about the fact of pendency of this suit and contacted her counsel and furnish the death certificate and her address and on advice of her counsel she along with other applicants have filed this application



to come on record as legal heirs of deceased plaintiff No.1 who is none other than her husband. It is just and necessary in the interest of justice to bring us/applicants as legal heir of deceased plaintiff No.1 as the right to sue survives for effective adjudication of dispute between the parties by condoning delay. Hence, prays to allow these applications.

3. Per contra, the counsel for the defendants have filed objection and contended that, The application filed by the applicant/deponent is not maintainable either in law or facts of the case. The application filed by the applicant/deponent is not maintainable on account of lapse of two years on this score the applications are not maintainable. The applicant/deponent has filed a sworn false affidavit by suppressing the real and actual facts before this court. The applicant has sworn a affidavit as stated in the application only to filing a application is not genuine one and same is liable to be rejected. The plaintiff no-1 named Seenappa who died on 30-09-2023 leaving behind his wife and his children are the legal heirs i.e., the said Seenappa is having one wife and five four children namely his wife Saraswathamma and his



children namely Savitha, Kavitha, Lakshmi and Venkatesh, in the applications of the deponent only Savitha, Lakshmi and Venkatesh is arrayed as a parties to the Lr of the deceased plaintiff no-1 and given up the name of another daughter Kavitha D/o late. Seenappa and suppress the name of the said Kavitha D/O late Seenappa and said Kavitha is also necessary party in this suit. The deponent/applicant in her affidavit not explained the reasons about to given up the name of the said Kavitha in their application. Prior to filing this application the plaintiff no-2 has filed the same application before this Hon'ble court and same has been withdrawn by filing a memo. In that application also the name of the said Kavitha D/O Seenappa was left out. The deponent has falsely admitted that in her affidavit, Saraswathamma Savitha, Lakshmi and Venkatesh are only the legal heirs of the deceased Seenappa. However the said Kavitha also a legal heir of the deceased Seenappa. It is submit that, the grounds urged under the I A and affidavit are baseless and further the applicant has taken the false grounds in the sworn affidavit as such the application filed by the applicant is not maintainable and deserves to be dismissed. Hence, prays to reject the applications.



4. Heard on both side.

5. The points that arise for the consideration of this court is as follows:

1. Whether the LR's of plaintiff have made out grounds to allow the I.A.No.27 to 29 ?

2. What order?

6. The findings on the above point are as follows:

Point No.1: In the Affirmative.

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

REASONS

7. Point No.1:- The suit of the plaintiff is for partition and separate possession. The applicants have contended that, they are the only legal heir of the deceased plaintiff No.1. On the other hand the defendants contended that, the applicants have not impleaded One Kavitha, who is the daughter of the deceased plaintiff No.1. The applicants in their affidavit submitted that, they are the only legal heirs of the deceased plaintiff No.1 and they have not given any reason for the non



impleading of said Kavitha. It is pertinent to note here that, the defendants have not disputed the relationship between the plaintiff No.1 and the applicants, who are the wife and children of the plaintiff No.1. It is the specific contention the defendants that, the applicants have not made Kavitha, who is the daughter of plaintiff No.1. In order to substantiate their contention the defendants have not produced any documents. Thus, in the absence of any documents it cannot be presumed that, the applicants brought this application without impleading the daughter of the plaintiff No.1. Since, the suit is one for the Partition and Separate Possession all the joint family members are necessary parties to the suit. The applicant are the legal heirs of plaintiff No.1 the right to sue and to be sued survives in their favour.

8. So for as the delay is concerned, in order to avoid multiplicity of proceedings and by invoking Sec.5 of Limitation Act, the delay is to be condoned on cost. As such no prejudice will caused to the defendants if applications are allowed. Thus, for all these reasons I.A's. are liable to be allowed in the interest of justice. Hence, I answer the above point No.1 in the **Affirmative**.



9. Point No.2: In view of the findings on point No.1, I proceed to pass the following :-

ORDER

I.A.No.27 to 29 filed U/O 22 Rule 9 and 3 of CPC and Sec.5 of Limitation Act is hereby allowed on cost of Rs.500/- each.

Call to carried out amendment and to furnish amended plaint on 06.02.2026.

(Dictated to the Stenographer directly on computer, typed by her, revised, corrected by me and then pronounced in the Open Court on 27th day of January 2025).

(Zarifa Banu A.R.)
Prl. Senior Civil Judge and
J.M.F.C., Sira.