



**I.A.No.IX**

**Plaintiffs:**           **Shaikh Ummer Hassan Haji Shaikh**  
**Applicants**           **Ahamad , since deceased by his LRs.**

1. Smt. Naseemabi W/o. Shaikh  
Ummar Hasan,  
Aged 53 years,  
R/o. HIG-I-3, Road No.D-4,  
New KHB Colony,  
Karwar *and others.*

Vs.

**Defendants:**           1. Shri. Mohammed Abdul Latif  
**Opponents**           Shaikh,  
Age: 70 years,  
Occ: Retired,  
R/o. A/3/43 Sector B,  
CIDCO Colony, New Panvil,  
Raigad, Maharastra *and others.*

**I.A.No.X**

**Plaintiffs:**           **Shaikh Ummer Hassan Haji Shaikh**  
**Applicants**           **Ahamad , since deceased by his LRs.**

1. Smt. Naseemabi W/o. Shaikh  
Ummar Hasan,  
Aged 53 years,  
R/o. HIG-I-3, Road No.D-4,  
New KHB Colony,  
Karwar *and others.*

Vs.

**Defendants:**           1. Shri. Mohammed Abdul Latif  
**Opponents**           Shaikh,  
Age: 70 years,

Occ: Retired,  
R/o. A/3/43 Sector B,  
CIDCO Colony, New Panvil,  
Raigad, Maharashtra *and others.*

**I.A.No.XI**

**Plaintiffs:**            **Shaikh Ummer Hassan Haji Shaikh**  
**Applicants**           **Ahamad , since deceased by his LRs.**

1.            Smt. Naseemabi W/o. Shaikh  
              Ummar Hasan,  
              Aged 53 years,  
              R/o. HIG-I-3, Road No.D-4,  
              New KHB Colony,  
              Karwar *and others.*

Vs.

- Opponents:**
1.            Shri. Salim Yakub Momim,  
              Aged about 45 years,  
              R/o. High Church Road, Karwar.
  2.            Shri. Asif Yakub Momim,  
              Aged about 42 years,  
              R/o. High Church Road, Karwar.
  3.            Smt. Hafizabi D/o. Yakub Momim,  
              Aged about 40 years,  
              R/o. High Church Road, Karwar.

**COMMON ORDERS ON I.A. NO.IX to XI**

The learned counsel for plaintiffs has filed these three applications under the provisions of Section 5 of Limitation Act to condone the delay in filing the application to bring

the legal heirs of deceased defendants No.2 and 3 on record, under Order 22 Rule 9 of C.P.C. to set aside the order of abatement of suit and under Order 22 Rule 4 R/W. Order 1 Rule 10 R/W. Section 151 of C.P.C. seeking permission to bring the legal heirs of deceased defendants No.2 and 3 on record.

2. The plaintiff No.6 has sworn to affidavit and stated that on the last occasion, the learned advocate for defendants has orally submitted before the court that the defendants No.2 and 3 are dead. Thereafter, they have enquired about the same and then came to know that the defendants No.2 and 3 are dead. The defendants No.2 and 3 are not related to them and therefore, they had no occasion to know about the death of defendants No.2 and 3. He is residing at Bangalore since his mother is sick and his brothers and sisters are also residing at different places. Therefore, there was no occasion for plaintiffs to know about the death of defendants No.2 and 3. As per the information gathered, the defendant No.2 has left behind her three legal heirs. But, the defendant No.3 was unmarried and residing with defendant No.2. Therefore, the defendant No.3 has no legal heirs except the legal heirs of defendant No.2.

3. It is further stated in the affidavit that there is no delay in filing the application from the date of knowledge. However, it is learnt that more than 120 days are over from the date of their death and therefore, the applications are filed to condone the delay. The defendants No.2 and 3 were represented by their lawyer before the court. But, the lawyer has not stated anything about the death of defendants No.2 and 3. But only on the last date of occasion, the advocate for defendant No.4 has submitted about the death of defendants No.2 and 3. The defendants No.1 to 3 have sold the property in favour of defendant No.4. The defendant No.4 is the contesting party in the suit. Since the defendants No.2 and 3 are dead, the legal heirs are to be brought on record as cause of action survives against them. It is on these grounds, the plaintiffs have prayed for allow the applications.

4. On service of notice, the legal heirs of deceased defendant No.2 have appeared before this court through their learned counsel and filed objections to I.A.No.IX to XI contending that the applications filed by the plaintiffs are not maintainable under relevant provisions of law. The legal heirs of deceased defendant No.2 have not inherited any property from deceased

defendant No.2. Therefore, the present legal heirs are not the relevant parties in the present suit. The present legal heirs were not aware that the suit schedule property was sold by the deceased defendant No.2. The present legal heirs of deceased defendant No.2 have to take legal action against the defendant No.1 and purchaser. Therefore, the plaintiffs have no right to claim any action against the present legal heirs. The plaintiffs being the family members of defendant No.2 and who were aware of death of defendant No.2 have failed to take necessary steps to implead the present legal heirs on record with a malafide intention. Therefore, the applications are not maintainable. It is on these among other grounds, the legal heirs of deceased defendant No.2 have prayed for dismissal of the application.

5. The learned counsel for defendant No.4 has filed objections contending that I.A.No.IX to XI are contrary to law and facts. The defendant No.2 has expired on 29.12.2017, where as the defendant No.3 has expired on 28.4.2017. But, I.A.No.IX to XI were filed on 18.10.2019. Therefore, already 1 year 9 months and 19 days and 2 years respectively elapsed. The plaintiffs have not given the exact period of delay in filing I.A.No.IX to XI nor sufficient cause is shown or explained in affidavits filed in support of I.A.No.IX to XI. Condoning the inordinate delay with any

justified reasons is not mere rituals and probably the plaintiff has taken the same as granted, without giving any reasons in causing the delay in filing I.A.No.IX to XI. The plaintiffs are bound to explain the reasons for delay of each day. But, the plaintiffs have not shown any reasons for delay in filing I.A.No.IX to XI. It will be unfair to deprive a party of valuable right accrued and vested in favour of defendants. The plaintiffs are very negligent in filing I.A.No.IX to XI and it is unreasonable to take away the right of defendants. It is the primary duty of plaintiffs to bring the legal heirs of deceased defendants No.2 and 3 within stipulated period of 90 days from the date of death and failing which the suit automatically by virtue of implication of law stands abated. No efforts were made on the part of the plaintiffs to obtain the death certificate of deceased defendants No.2 and 3 for producing with applications. It is on these among other grounds, the defendant No.4 has prayed for dismissal of the applications.

6. The defendant No.1 has not filed any objections to the applications.

7. I have heard the arguments on both sides and perused the entire records.

8. Now the points that would arise for my consideration are as under :

1. Whether the right to sue survives as against the legal heirs of deceased defendants No.2 and 3 and whether the plaintiffs have made out sufficient grounds to permit them to bring the legal heirs of deceased defendants No.2 and 3 and whether the legal heirs of deceased defendants No.2 and 3 are necessary to adjudicate the real controversy between the parties?
2. Whether the plaintiffs have made out sufficient grounds to come to the conclusion that they were prevented by sufficient cause from filing the applications within time?
3. Whether the plaintiffs have made out sufficient grounds to come to the conclusion that they were prevented from sufficient cause in preferring the application within such period?
4. What Order?

9. On considering the arguments of learned counsels for both sides and on considering the reasons assigned in the affidavits annexed to I.A.No.IX to XI and materials on record, now, my answer to the above points are as under:

Point No.1: In the **affirmative.**

Point No.2: In the **affirmative.**

Point No.3: In the **affirmative.**

Point No.4: As per final order, for the following:

## **REASONS**

10. **Points No.1 to 3**:- For the sake of convenience, clarity and also to avoid repetition of facts being narrated separately, these three points are taken up together for common discussion.

11. The plaintiffs have filed this suit against the defendants to declare that they are entitled for partition of half share in the suit schedule property and the sale deed dated 12.6.2008 executed by defendants No.1 to 3 in favour of defendant No.4 in respect of suit schedule property is not binding on them to the extent of their half share and hence, the same is null and void to that extent and consequential relief of permanent injunction restraining the defendant No.4 from developing or alienating the suit schedule property till partition is effected by metes and bounds on the ground that after the death of their father, the plaintiffs were all in joint possession of the suit schedule property along with defendant No.1 and they have right and share over the suit schedule property.

12. The defendants have resisted the suit by filing written statement contending that the defendant No.1 is in actual possession of the suit schedule property to the knowledge of the

husband of first plaintiff and other plaintiffs and has perfected his title by way of adverse possession and defendant No.4 is the bonafide purchaser of suit schedule property under a registered sale deed dated 12.6.2008 executed by defendants No.1 to 3 and therefore, the suit is not maintainable and deserves to be dismissed.

13. This court has framed the issues on 23.11.2018. On behalf of plaintiffs, the plaintiff No.6 has been examined as P.W.1 and got the documents marked as Exs.P.1 to P.13. It is at this stage of proceedings and when the case is set down for cross-examination of P.W.1, the learned counsel for the defendants reported the death of defendants No.2 and 3 and therefore, the plaintiffs have filed these three applications seeking permission to bring the legal heirs of deceased defendants No.2 and 3 by setting aside the order of abatement of suit by condoning the delay in filing the applications.

14. The learned counsel for plaintiffs has argued with force that the learned counsel for defendants has orally submitted before the court that the defendants No.2 and 3 are died. The plaintiffs do not know the date of death of defendants No.2 and 3 as they are not related to plaintiffs and hence, the plaintiffs had no occasion to know about the death of defendants No.2 and 3. It is further contended that the plaintiff No.6 is

residing at Bangalore, since his mother is sick and the other plaintiffs are residing at different places and therefore, there was no occasion for the plaintiffs to know about the death of defendants No.2 and 3. Therefore, immediately after reporting the death of defendants No.2 and 3, the plaintiffs have taken steps and filed present applications.

15. It is further contended that there is no delay in filing the applications from the date of knowledge and to be on safer side, the plaintiffs have filed these applications to condone the delay. The defendants No.2 and 3 were represented by their lawyer before the court, but the lawyer has not stated about the death of defendants No.2 and 3 and only on the last occasion, the advocate for defendant No.4 has submitted about the death of defendants No.2 and 3. It is further contended that the defendants No.1 to 3 have sold the property in favour of defendant No.4 and now, the defendant No.4 is contesting party and therefore, the legal heirs have to be brought on record, as the cause of action survives against them and hence, the applications are to be allowed.

16. In support of his submission, the learned counsel for plaintiffs has relied upon decision rendered by the **Hon'ble Supreme Court of India in Civil Appeal No.4440/2008** in between **Perumon Bhagvathy Devaswom vs. Bhargavi**

***Amma (Dead) by L.Rs and others***, wherein, while dealing with the provisions of Section 5 of Limitation Act, the Hon'ble Supreme Court has held that Section 5 gives the courts a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant. The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly.

17. The learned counsel for the plaintiffs also relied upon a decision reported in **2005(1) KCCR 317** in between **Noel F. C. Pinto vs. Mrs. Magdelien Mascarenhas (deceased) by L.Rs. and others**, wherein, while dealing with the provisions of Order XXII Rule 3 of C.P.C, the Hon'ble High Court of Karnataka has held that the nature of the abatement is not final disposal of the case. The word abatement literally means lessening or shortening. When a court is unable to proceed with the case for the reason that proper parties are not before it, the proceedings get abated. When an application is made to bring necessary

parties before the court, the court brings the proper parties before it and proceeds with the hearing. It is clear from the above provisions that on the abatement of a suit the court has jurisdiction to entertain the application for setting aside the abatement.

18. The learned counsel for plaintiffs also relied upon a decision reported in **2007(1) KCCR 282** in between **Smt. Savithri vs. Sri. Eshwara (deceased) by LRs.**, wherein, while dealing with the provisions of Order XXII Rule 9 of C.P.C, the Hon'ble High Court of Karnataka has held that mere wrong quoting of the provision is not fatal to the application, if the application otherwise satisfies all the requirements to be pleaded. Procedure must be considered as hand maid of justice. It must not obstruct the court of law to render justice.

19. The learned counsel for the plaintiffs also relied upon a decision reported in **2002(3) KCCR SN 229** in between **Bhjarangalal Agarwal (deceased) by L.Rs. vs. Channappa Hatpakki (deceased) by L.Rs.**, wherein, while dealing with the provisions of Order XXII Rule 4 of C.P.C, the Hon'ble Supreme Court has held that when the reasons given was they were not aware of the proceedings, it has to be held that cause shown is sufficient for condoning the delay. On the same principle, the learned counsel for the plaintiffs also relied upon a decision

reported in **2008(3) KCCR 1634** in between **Juvam Bouthis Pinto (deceased) by LRs vs. Nonu Maily (deceased) by LRs.**

20. Per contra, the learned counsel for defendants has vehemently contended that the defendant No.2 died on 29.12.2017 and defendant No.3 has expired on 28.4.2017. I.A.No.IX to XI has been filed on 18.10.2019. There is a delay of 1 year 9 months and 2 years respectively in filing these applications, for which, there is absolutely no explanation as such forthcoming in the affidavits annexed to I.A.No.IX to XI. It is further contended that the plaintiffs have not given exact period of delay and also date of death of defendants No.2 and 3 which is very much essential to consider the applications and also not assigned any grounds to condone the delay.

21. It is further contended that condoning inordinate delay with any justified reasons is not mere rituals and the plaintiffs have taken the same has granted without giving any reasons in causing the delay in filing the applications. The plaintiffs are required under law to explain the delay for each day. But, in this case, the plaintiffs have not explained the delay for inordinate delay in filing the applications. The plaintiffs have not taken any steps either to obtain the death certificates or filed

the applications at the earlier point of time and therefore, the applications are liable to be dismissed.

22. In support of his submission, the learned counsel for defendants has relied upon a decision reported in **2010(5) KCCR SN 266** in between **Balwant Sing (Dead) vs. Jagdish Singh and others**, wherein, the Hon'ble Supreme Court has held that once a valuable right has accrued in favour of one party, as a result of the failure of the other party, to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right, on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party.

23. The learned counsel for defendants also relied upon a decision reported in **AIR 1991 KERALA 83** in between **M/s. Craft Center and others vs. The Koncherry Coir Factories, Cherthala**, wherein, while dealing with the provisions of Section 3 of Limitation Act, their Lordships have observed that Section 3 of Limitation Act is mandatory and absolute and if the suit barred by time on face of it, court is duty bound to dismiss same even at appellate stage though issue of limitation not raised.

24. The learned counsel for defendants also relied upon a decision reported in **AIR 1998 Supreme Court 2276** in

between ***P. K. Ramachandran vs. State of Kerala and another***, wherein, while dealing with the provisions of Section 5 of Limitation Act, the Hon'ble Supreme Court has held that the law of limitation has to be applied with all its rigour prescribed by statute and courts have no power to extend period of limitation on equitable grounds.

25. The learned counsel for defendants relied upon a decision reported in ***2000(5) Kar. L. J. Sh.N. 45***, wherein, while dealing with the provisions of Order 22 Rule 9 of C.P.C, the Hon'ble High Court of Karnataka has held that mere fact of appellant's coming to know of respondent's death belatedly is not sufficient to justify belated application, reason which prevented applicant from knowing of death within reasonable time must be established especially when legal representative of deceased have secured valuable right on abatement of appeal. Application for condonation of delay lacking in such details is liable to be rejected and inherent powers of court cannot be invoked to condone such delay.

26. The learned counsel for defendants also relied upon a decision reported in ***ILR 1997 KAR 559*** in between ***State of Karnataka vs. Marimalladevaru***, wherein, while dealing with the provisions of Section 5 of Limitation Act, the Hon'ble High Court of Karnataka has held that affidavit for condonation of

delay not making out sufficient cause, held no ground made for admitting appeal and appeal is liable to be dismissed on ground of delay. It is further held that it is not the duty of the court to make out sufficient cause, be it the applicant state or an ordinary person.

27. The learned counsel for defendants also relied upon a decision reported in **ILR 1995 KAR 915** in between **Venkataiah vs. State of Karnataka**, wherein, while dealing with the provisions of Order 22 Rule 9 of C.P.C. and Section 5 of Limitation Act, the Hon'ble High Court of Karnataka has held that it is the duty of the applications to state specifically why they did not or could not know or causes preventing them from knowing, if no reason indicate, no prima facie case shown and notice on application not mere ritual, to be issued only when prima facie case shown.

28. The learned counsel for defendants also relied upon a decision reported in **AIR 2014 Supreme Court 746** in between **Basawaraj and another vs. The Special Land Acquisition Officer**, wherein, while dealing with the provisions of Section 5 of Limitation Act, the Hon'ble Supreme Court has held that sufficient cause is cause for which application cannot be blamed for his absence or in action and cause for which party cannot be said to have not acted diligently or remained inactive.

29. The learned counsel for defendants also relied upon a decision reported in **2002(2) KCCR 1058** in between **Raghavendra Rao and others vs. N. Veeravenkatrao and others**, wherein, while dealing with the provisions of Section 57 of Evidence Act, the Hon'ble High Court of Karnataka has held that court must take judicial notice of the fact a person who has parted with the property by executing sale deed, will not be interested any more in respect of the said property unless he possess dishonest intention of either creating problem to the purchaser or keep an eye to grab the said property by hook or crook.

30. In the light of the arguments canvassed on both the sides, I have carefully gone through the principles laid down in the above cited decisions and also provisions of Order 22 Rule 4, Order 22 Rule 9 of C.P.C. and Section 5 of Limitation Act. As per the provisions of Order 22 Rule 4 of C.P.C. where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a part and shall proceed with the suit.

31. As per the provisions of Order 22 Rule 9 of C.P.C. where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action. However, the plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

32. Further, as per the provisions of Section 5 of Limitation Act, any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period. Now keeping the principles laid down in the above cited decisions including above said provisions of law in mind, let us consider as to whether the plaintiffs could able to comply the provisions of Order 22 Rule 4, Order 22 Rule 9 of C.P.C. and Section 5 of Limitation Act.

33. The plaintiffs have filed this suit against the defendants seeking partition of half share in the suit schedule

property and also for declaration. It is not in dispute that the defendants No.1 to 3 have already sold the property in favour of defendant No.4 and the defendant No.4 is the contesting party in this suit. Under these circumstances, since the defendants No.2 and 3 are dead, the legal heirs of deceased defendants No.2 and 3 have to be brought on record as the cause of action and right to sue survives as against them. Hence, the legal heirs of deceased defendants No.2 and 3 are also necessary to adjudicate the real controversy between the parties.

34. It is important to note here that the defendant No.1 has not filed any objections to I.A.No.IX to XI. However, the legal heirs of deceased defendant No.2 have filed objections contending that they have not inherited any property from deceased defendant No.2 and therefore, they are not relevant party in the present suit and they were not aware that the suit schedule property was sold by the deceased defendant No.2 and they have to take legal action to defendant No.1 and purchaser.

35. But, it is necessary to note here that whether defendants No.2(a) to 2(c) have inherited any property from defendant No.2 or not and they were not aware about the sale of suit schedule property by defendant No.2 or not is a matter which requires evaluation of evidence to be recorded at the trial. Under these circumstances, the legal heirs of deceased

defendants No.2 and 3 have to be brought on record to adjudicate the real controversy between the parties.

36. Further, the legal heirs of defendants No.2 and 3 also contended that the plaintiffs were aware of death of defendant No.2, but have failed to take steps to implead the present legal heirs on record with malafide intention and therefore, the applications are not maintainable. Further, the defendant No.4 also contended that it is the duty of the plaintiffs to bring the legal heirs of deceased defendants No.2 and 3 within stipulated period. But, the plaintiffs neither mentioned the date of death nor period of delay to be condoned and there is delay of 1 year 9 months and 2 years respectively in filing the applications which is not maintainable.

37. It is important to note here that the defendants No.2 and 3 were represented through their learned counsel. Therefore, soon after the death of defendants No.2 and 3, the learned counsel for defendants No.2 and 3 or at least their legal heirs required to report the exact date of death of defendants No.2 and 3 before the court so as to take the steps by the plaintiffs. But, neither the counsel for deceased defendants No.2 and 3 nor the legal representatives of defendants No.2 and 3 have reported the exact date of death of defendants No.2 and 3 to the court and court has not given any notice of such death to the plaintiffs.

38. However, on 27.9.2019, both sides have submit that the defendants No.2 and 3 are dead and therefore, the case was posted for steps for legal heirs of deceased defendants No.2 and 3. Accordingly, the learned counsel for the plaintiffs have filed these I.A.No.IX to XI to bring the legal heirs of deceased defendants No.2 and 3 on record by setting aside the order of abatement of suit by condoning the delay on the next date of hearing dates i.e. on 18.10.2019.

39. It is forthcoming in the materials placed on record that the defendants No.2 and 3 are not related to plaintiffs and the plaintiff No.6 is residing at Bangalore as his mother is sick and other plaintiffs are residing with different places and therefore, they were not aware about the date of death of defendants No.2 and 3 and there was no occasion for the plaintiffs to know about the date of death of defendants No.2 and 3. Therefore, the reasons assigned by the plaintiffs in the affidavits annexed to I.A.No.IX to XI for not knowing the exact date of death of defendants No.2 and 3 and also non-mentioning of the date of death of defendants No.2 and 3 are quiet probable and there are no reasons to doubt or to discard the reasons assigned in the applications. Because, the learned counsel for the defendants have filed a memo with death certificates of

defendants No.2 and 3 which would indicate that the defendant No.2 died on 29.12.2017 and defendant No.3 died on 28.4.2017.

40. No doubt it is true that there is a delay of 1 year 9 months and 2 years respectively in filing the applications to bring the LRs of deceased defendants No.2 and 3. But, as already stated above, it is stated in the affidavits annexed to I.A.No.IX to XI that the defendants No.2 and 3 were represented by their advocates before the court, but they have not stated anything about the death of defendants No.2 and 3 before the court and the defendants No.2 and 3 are not related to plaintiffs and plaintiffs are residing at Bangalore and other different places. These facts have not been seriously disputed by the defendants.

41. It is well settled position of law that the power to condone delay is conferred on the court in order to enable them to do substantial justice to parties by disposing of matter on merits. Ordinarily a litigant does not stand to benefit by lodging an appeal late. Refusing to condone delay can result in meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties. When substantial justice and technical consideration are pitted against each other, cause of justice deserves to be preferred for the other side

cannot be claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence or on account of malafide. A litigant does not stand to benefit by resorting to delay, but in fact, he runs a serious risk.

42. It is also well settled position of law that law of procedure are mean to regular effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizens under personal, property and other laws. Procedure has always been viewed as the hand maid of justice and not mean to hamper the cause of justice or sanctify miscarriage of justice. A careful reading of the provisions contained in order 22 Rule 4, Order 22 Rule 9 of CPC and Section 5 of Limitation Act as well as subsequent amendment thereto would lend credit and support to the views that they were devised to ensure their continuation and culmination into an effective adjudication and not to retard the further progress of the proceedings and thereby non-suit the others similarly placed as long as their distance and independent rights to property or any claim remain in tact and not list forever due to the death of one or the other in the proceedings. The provisions under Order 22 of CPC and Section 5 of Limitation Act are not to be construed on a rigid manner of principle, but must

ever be viewed in a flexible tool continues in the administration of justice.

43. Though the defendants No.2 and 3 were represented by their respective learned counsels, but soon after the death of defendants No.2 and 3, neither the learned counsel for defendants No.2 and 3 nor their legal representatives had reported the death of defendants No.2 and 3 before the court. But only on 27.9.2019, the learned counsel for defendants reported the death of defendants No.2 and 3 and accordingly, on the next day itself, the plaintiffs have filed these three applications. Under these circumstances, the delay in filing the applications are quiet probable and there are no reasons to disbelieve or to doubt the reasons assigned in the affidavits annexed to I.A.No.IX to XI.

44. Therefore, the arguments of the learned counsel for the defendants that the plaintiffs neither mentioned the correct date of death of defendants No.2 and 3 nor the exact delay of filing the applications or shown any sufficient cause and therefore, the applications are not maintainable and liable to be dismissed is not sustainable under law and therefore, cannot be accepted and the decisions cited in this regard also not applicable to the present facts and circumstances of the case.

45. On the other hand, there is some legal force in the submission of the learned counsel for the plaintiffs that though the defendants No.2 and 3 were represented by the learned respective counsels, but neither the learned counsel for defendants No.2 and 3 nor legal heirs of deceased defendants No.2 and 3 have reported the date of death of deceased defendants No.2 and 3 at the earlier point of time and therefore, the plaintiffs came to know about the date of death of defendants No.2 and 3 only on the submission of the learned counsel for defendants and therefore, the delay was caused in filing these applications and since the defendants No.1 to 3 have sold the suit schedule property in favour of defendant N.4, the right to sue survives as against the legal heirs of deceased defendants No.2 and 3 and therefore, it is necessary to allow the applications to adjudicate the real controversy between the parties and the decisions cited in this regard also applicable to the present facts and circumstances of the case.

46. Therefore, for the reasons discussed above, this court is of the considered view that the plaintiffs have made out sufficient grounds to come to the conclusion that right to sue survives as against legal heirs of deceased defendants No.2 and 3 and they were prevented from sufficient cause for filing these applications within stipulated period and therefore, the

delay was caused. Hence, if these applications are allowed by imposing some costs it would meet the ends of justice. Otherwise, the chances of multiplicity proceedings including the wastage of cost and time of both the litigants cannot be ruled out. Hence, ***I answer points No.1 to 3 in the affirmative.***

47. **Point No.4**:- In view of my findings on points No.1 to 3, I proceed to pass the following:

**:ORDER :**

I.A.Nos.IX to XI filed by the plaintiffs under the provisions of Section 5 of Limitation Act, Order 22 Rule 9 of C.P.C. and Order 22 Rule 4 R/W. Order 1 Rule 10 R/W. Section 151 of C.P.C. are hereby allowed with costs of Rs.3000/- each to be payable to the defendants.

The plaintiffs are permitted to bring the legal heirs of deceased defendants No.2 and 3 on record.

The order of abatement of suit is set aside.

The delay in filing the applications to bring the LRs of deceased defendants No.2 and 3 on record and for order of abatement of suit is hereby condoned.

The learned counsel for plaintiffs is directed to carry out necessary amendments to the cause title and to furnish the amended plaint on or before next date of hearing without fail.

Call on for costs, amendment and to furnish the amended plaint.

(Dictated to the Stenographer, transcribed by her, revised and corrected by me, signed and then pronounced in the Open Court on this the **31<sup>st</sup> Day of July, 2020.**)

**( N.M. Ramesha )**  
Prl. Senior Civil Judge,  
Karwar.