

KAUK720007952022



**In the Court of the Senior Civil Judge & Prl. JMFC,
Kumta, At Kumta, Uttara Kannada**

Dated this the 29th day of June, 2024

PRESENT

**Smt. B.S.Rayannawar, B.A., L.L.B.,
Senior Civil Judge
& Prl. JMFC, Kumta.**

FDP.No.3/2022

Petitioner:

Smt. Bhavani W/o. Ramachandra Nayak,
R/o. Vasare, Ankola,
represented by her G.P.A. holder
Smt. Kalpana Aravind Naik,
Aged 52 years, Occ: Household,
R/o. Industrial Estate,
Kumta, Tq. Kumta.

(By Sri. N.M.N., Advocate)

V/s

Respondents:

1. Smt. Malati Rama Naik U.F.M.,
Aged about 82 years,
Occ: Household,
R/o. Om Shanti, 16th Road,
Santacruz, Mumbai.
2. Smt. Laxmi Govind Naik U.F.M.,
Aged about 76 years,
Occ: Household,

R/o. Divagi, Tq. Kumta.

3. Smt. Shanti Venkatraman Nayak,
Aged about 81 years,
Occ: Household,
R/o. C/o. N.S. Naik House,
Near Muroor Cross,
Kumta, Tq. Kumta.
4. Smt. Leela Narayan Nayak,
Aged about 79 years,
Occ: Household,
R/o. Behind Old V.R.Naik Hospital,
College Road, Kumta, Tq. Kumta.
5. Smt. Shobha Gajanan Gaonkar,
Aged about 73 years,
Occ: Household,
R/o. Kamanor Oni,
Ghataprabha,
Tq. Gokak,
District : Dharwad.

(R-1 & 2 by Sri. D.S.B./Sri. M.T.H.,- Advocates)
(R-3 & 4 by Sri. H.V.G., Advocate)

Proposed:
Respondents

- 5(a). Sri. Gajanan Keshav Gaonkar,
Aged about 77 years, Occ: Business,
R/o Ward No.4, Kambar Galli,
Mallapur, S.A.Belgaum,
Ghatprabha 591 306, Gokak Taluk,
Karnataka.
- 5(b). Smt. Katyayini Nayak W/o Nagaraj Nayak
Aged about 48 years, Occ: Housewife,
R/o Shivdurga Pratham Nivas,
Flat No.202, 14th Main,
38th cross, 4th T Block, Shalini Ground,
Jayanagar, Bangaluru,

Bengaluru Taluka 560 041. Karnataka.

5(c). Smt. Abhilasha Gaonkar D/o Gaju
Aged about 44 years,
Occ: Private employee,
R/o #400/1 Kambar lane,
Near Bellad Bagewadi Bank,
Ghatprabha/ Dhupadal Gokak (Rural)
Gokak Taluk, Belgaum 591 306,
Karnataka.

(R-5(a) to 5(c) by Sri. V.S.P., Advocate)

Common Orders on I.A.Nos.2 to 4

That the petitioner/ applicant has filed I.A.No.II under Order XXII Rule 4 read with Section 151 of CPC to permit him to implead the proposed respondent No.5(a) to 5(c) as respondent No.5(a) to 5(c) as the legal heirs of the deceased respondent No.5. I.A.No.III filed under Order 22 Rule 9 of CPC to set aside the abatement. I.A.No.IV filed under Section 5 of the Limitation Act to condone the delay in filing application to set aside the abatement.

2. These three applications are supported by affidavits sworn to by the petitioner. Petitioner has contended that on 07.08.2023, respondent No.5 died, proposed respondent Nos.5(a) to 5(c) are her legal heirs, impleading them in this case is very necessary, since they could not get the correct address of husband and daughters of the deceased within the prescribed period, she could not implead them within the

period of limitation and there is no malafide intention in delay in filing these applications. Hence, prayed to allow these applications.

3. On receipt of notice of these applications, the proposed respondent Nos.5(a) to 5(c) appeared through their counsel, but not filed any objections. Hence, as per order dated 24.06.2024 this Court pleased taken objections to I.A.Nos.II to IV taken as nil.

4. Heard learned counsel for petitioner on I.A.Nos.II to IV.

5. Following points arise for my consideration

1. Whether the applicant/ petitioner has made out a sufficient ground to implead the proposed respondent Nos.5(a) to 5(c) as respondent Nos.5(a) to 5(c) as the legal heirs of the deceased respondent No.5?
2. Whether the applicant/ petitioner has made out a sufficient ground to set aside the abatement?
3. Whether the applicant/ petitioner has made out a sufficient ground to condone the delay in filing application to set aside the abatement?
4. What order?

6. My findings on the aforesaid points are as follows:-

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

7. **Point No.1 to 3**:- Since these three points are interlinked to each other, they are taken up together for common discussion in order avoid repetition of facts and circumstances. Petitioner has filed this petition under Order XX Rule 18 and Section 54 of CPC to draw final decree by allotting her 1/6th share in the petition schedule properties as per the preliminary decree passed in O.S.No.18/2019 on the file of this Court.

8. Petitioner has contended that on 07.08.2023, respondent No.5 died, proposed respondent Nos.5(a) to 5(c) are her legal heirs, impleading them in this case is very necessary, since she could not get the correct address of the husband and daughters of the deceased within prescribed period, she could not implead them within the period of limitation. Proposed respondent Nos.5(a) to 5(c) appeared through their counsel and not filed any objections to these applications.

9. It is not the case of proposed respondent Nos.5(a) to 5(c) that they are not the legal heirs of the deceased respondent No.5. hence it shows that the respondent Nos.5(a) to 5(c) are the legal heirs of respondent No.5.

10. Regarding the delay in filing the applications applicants have contended that,since she could not get the correct address of the husband and daughters of the deceased within prescribed period, she could not implead them within the period of limitation. Hence there is no reason to disbelieve the version put forth by the petitioner regarding explanation of sufficient cause, an occurring Under Section 5 of Limitation Act, as well as Under Order XXII of CPC. It is also well settled principle that while considering the application for condonation of delay, Court should adopt liberal approach and should not adopt hyper technical. Acceptance of the reason assigned is a rule, resulting the same is an exception. Justice should not be deny only on the ground of delay. Hence, in view of the matter the applicants have made out sufficient grounds for condone of delay. Accordingly, point Nos.1 to 3 answered in the Affirmative.

11. **Point No.4:** in view of above discussions, I proceed to pass the following;

ORDER

I.A.Nos.II to IV filed by the applicant/ petitioner under Order XXII Rule 4 read with Section 151 of CPC, Order 22 Rule 9 of CPC and Section 5 of the Limitation Act are hereby allowed.

Abatement of suit is set aside and the petitioner is permitted to bring the legal heirs of respondent No.5 as respondent Nos.5(a) to 5(c) on the record.

For amendment and to furnish copy of amended petition by 12.07.2024.

(Dictated to the Stenographer directly to the computer, then corrected and pronounced by me in the open court on this date the 29th day of June, 2024)

(Smt. B.S.Rayannawar)
Senior Civil Judge
& Prl. JMFC., Kumta