

IN THE COURT OF THE SENIOR CIVIL JUDGE AND ACJM,

KARKALA

Present: Smt.Sharmila C.S., B.A.L., LL.M.,
Senior Civil Judge and ACJM, Karkala.

Dated: This the 30th day of July , 2024.

O.S.No.44/2019

Smt. Suneetha @ Sumithra and others	.. Plaintiffs
- Vs. -	
Sri. Sankayya and others	.. Defendants

PARTIES TO I.A.NO.16 to 19

Mr. Vasu,
Aged about 70 years,
S/o. Late Akkani Poojarthi and
Govinda Poojary,
R/at. Balladi House,
Mudradi village and Post,
Hebri Taluk, Udupi District.

..Applicant/3rd
plaintiff

- Vs. -

1. Smt. Suneetha @ Sumithra,
Aged about 76 years,

2. Smt. Sumana,
Aged about 75 years,

Both are children of
Late Akkanni Poojarthi and
Govinda Poojary,

Both are R/at Kuntebettu,
Shivapura Village,
Hebri Taluk, Udupi District.

3. sri. Sankayya Poojary,

Aged about 85 years,
S/o. Late Akkanni Poojarthi
and Govinda Poojary,
R/at. Cheenkrabettu, Mudradi village,
Hebri Taluk, Udupi District.

4. Smt. Kamala,
Aged about 78 years,
D/o. Late Akkanni Poojarthi and
Govinda Poojary,
R/at. Kuntebettu, Shivapura
Village, Hebri Taluk,
Udupi District. .
5. Smt. Kalyani,
Aged about 80 years,
6. Smt. Leela,
Aged about 62 years,
7. Smt. Vijaya,
Aged about 59 years,
8. Sri.Ananda,
(Since deceased,)
Aged about 57 years,
- 8(a) Mr. Harish,
Aged about 25 years,
S/o. Late Ananda,
R/o. Darkas House, Nayarakodu,
Shivapura Village, Hebri taluk.
- 8(b) Smt. Padmavathi,
Aged about 22 years,
D/o. Late Ananda,
R/o. Darkas House, Nayarakodu,
Shivapura Village, Hebri taluk.
9. Smt. Geetha,
Aged about 50 years,

10. Sri. Suresha,
Aged about 48 years,
11. Sri. Sathish,
Aged about 45 years,
Defendant No.5 is the wife and 6 to 22 are
the children of Late Kariya Poojary,

Defendants 5 to 11 are
R/at. Darkas House,
Nayara Kodu, Shivapura Village,
Hebri Taluk.
12. Smt. Sundari,
Aged about 72 years,
13. Smt. Vanitha,
Aged about 47 years,
14. Sri. Sadananda,
Aged about 45 years,
15. Smt. Padmavathi,
Aged about 43 years,
Defendant No.12 is the wife and
13 to 15 are the children of
Late Bhoja Poojary,
Defendants No.12 to 15 are
R/at. Mithottu House,
41 shiroor Village,
Udupi Taluk of Udupi District.
16. Sri. Vittala, (since deceased)
Aged about 66 years,
S/o. Late Akkani Poojarthi and
Govinda Poojary,
R/at. Omkar Nivas, Korngilla,
Perdoor Village, Udupi Taluk-576 124.
- 16(a) Smt. Girija Poojarthy,

Aged about 57 years,
W/o. Late Vittala.

16(b) Jayaram Poojary,
Aged about 38 years,
S/o. Late Vittala,
Both are residing at "Omkar Nivasa",
Korangila, Perdoor,
Udupi district-576 124.

.Opponents/
Plaintiffs 1, 2 and
defendants No.1 to 13
and 15

i.	Provision under which the application is filed	IA 16 : Order XXII, Rule 4 and section 151 of CPC IA 17: Section 5 of Limitation Act IA 18: Order 22 Rule 4(3) of CPC
ii.	Relief sought for	IA 16:To implead L.Rs. Of deceased defendant No.1 IA 17:To condone delay IA 18: Set aside abatement
iii	The date on which the application is filed	IA 16: 01-04-2024 IA 17: 01-04-2024 IA 18: 01-04-2024
iv	Number of the application	IA No.16 IA No.17 IA No.18
v	The date on which the objections are filed by different opponents	Deft No.2: 29-05-2024
vi	The date on which the orders were passed on the said application.	30-07-2024

COMMON ORDER ON I.A.NO.16 UNDER ORDER XXII
RULE 4 AND SECTION 151 OF C.P.C., I.A.NO.17 UNDER
SECTION 5 OF LIMITATION ACT, IA.NO.18 UNDER ORDER
22 RULE 4(3) OF C.P.C.

These three applications are taken up together for common discussion since they are inter-connected and attracts same reasoning.

2. These three applications are filed by the plaintiff No.3 seeking to implead the L.Rs., of deceased defendant No.1 who died on 27-05-2023.

3. In the affidavit has deposed that the defendant No.1 died on 27-05-2023 and that the L.Rs., are necessary parties to the proceedings and prays to allow the applications.

4. Per contra the L.Rs., of deceased defendant No.1 though were served with notice on I.As., did not appear before the court. However the counsel for defendant No.2 filed objections that the applications are not maintainable and denies the entire averments of the affidavits, accordingly prays to dismiss the I.As.

5. Heard from the counsel for plaintiffs and counsel the defendant No. 2.

6. The following points arise for my determination.

1) Whether the delay in bringing of the L.Rs. Of deceased defendant No.1 can be condoned?

2) Whether the order of abatement against defendant No.1 can be set aside?

3) Whether the L.Rs.,of deceased defendant No.1 are to be brought on record?

4) What Order?

7. My answer to the above points are

Point No.1 – In affirmative,

Point No.2 – In affirmative,

Point No.3 – In affirmative,

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

REASONS

8. **Points No.1 to 3**:- These points are take up together for common discussion, since they involve same set of facts and common reasonings.

9. The suit is one for partition, where the plaintiffs failed to appear before this court for a long period and the defendant No.14 got transposed himself as plaintiff No.3. After getting transposed, the present applications are filed by the plaintiff No.3.

10. In the accompanying affidavit plaintiff No.3 has deposed that the defendant No.2 colluded with the plaintiff and was prolonging the proceedings. Even the plaintiffs have remained absent before this court and thus have not taken any steps and thus have caused the delay. Accordingly sought for impleading the L.Rs., of deceased defendant No. 1. It appears that only on the allegations made against the defendant No.2, defendant No.2 filed objections to the above applications. However it is pertinent to note that the L.Rs., of deceased defendant No.1 did not appear in spite of service of notice. It was the L.Rs., of deceased defendant No.1 who ought to had objected for their impleading in the suit.

11. At this stage this court has to see that whether the right to sue accrues. When the suit is for partition, the L.Rs., would be entitled equally to the share of their mother if any.

Therefore the right of the defendant No.1 has to be decided in the presence of his L.Rs. Therefore, though there is delay in filing of these applications, when the right being sued persists, the order of abatement can be set aside. Mere delay in filing of these applications will not take away the right of the L.Rs., if any had accrued through their mother. Therefore the delay in bringing the L.Rs., can be condoned, the L.Rs., of deceased defendant No.1 needs to be impleaded. Accordingly Points No.1 to 3 are answered in affirmative.

12. **Point No.4**: In view of the above reasoning, I proceed to pass the following :

ORDER

I.A.No.16 filed under Order XXII Rule 4 and Section 151 of C.P.C., I.A.No.17 filed under section 5 of Limitation Act and I.A.No.18 filed under Order 22 Rule 4(3) of C.P.C., by the plaintiff No.3, are here with allowed.

The order of abatement against deceased defendant No.1 is set aside.

The delay in bringing the L.Rs., of deceased defendant No.1 is condoned.

The L.Rs., of deceased defendant No.1 are impleaded as defendant No.1(a to (j).

Counsel for plaintiff No.3 is permitted to carry out necessary amendment in the plaint by impleading the L.Rs., of deceased defendant No.1.

(Dictated to the Stenographer, transcribed by her , transcript corrected and then pronounced in Open Court on this the 30th day of July, 2024.)

(SHARMILA C.S.)

Senior Civil Judge & ACJM Karkala.