

**IN THE COURT OF ITINERARY SENIOR CIVIL JUDGE
HUVINAHADAGALI**

Dated this the 19th day of December 2025

PRESENT

MADHUSUDHANA D K
Itinerary Senior Civil Judge
Huvinahadagali

RA. No.1/2024

Petitioner: Sri. M. Kuppanna
V/s

Respondents: Sri. M. Narayanappa
and Others

**ORDERS ON THE IA NO.1 FILED BY THE APPELLANT
UNDER SECTION 5 OF THE LIMITATION ACT, 1963.**

The Appellant has filed the above IA No.1 under Section 5 of the Limitation Act by seeking condoning of delay of 394 Days in filing the above Appeal by challenging the Judgment and Decree in OS No.12/2012 by Judgment dated 21.11.2022.

2. In support of the IA No.1, the Appellant has filed his Affidavit by deposing on oath and he has also examined himself as the PW1 by marking Ex.P1. In brief, *the PW1 has deposed in his Affidavit that, he has filed the above Appeal by challenging the Judgment and Decree in OS No.12/2012 which was dismissed on 21.11.2022 and due to his age related illness, he could not file the Appeal in time and therefore, there is a delay*

of 394 Days in filing the Appeal. Therefore, he has prayed for condoning the delay.

3. The Respondent No.1 has filed his Objections to the IA No.1. The brief averments made by the Respondent No.1 are that, *the age of the Appellant is 72 Years is not a ground to condone the delay and therefore, for want of sufficient grounds, the IA No.1 is liable to be Rejected.*

4. I have heard arguments of the Rival Parties and perused the Material placed on Record.

5. On appreciating the Material placed on Record, the Points that arise for My consideration are as follows:

POINTS

1) Whether the delay of 394 days in filing the Appeal can be condoned?

2) What Order?

6. Now, My answers to the above Points are as follows:

ANSWERS

POINT NO.1: In the Affirmative

POINT NO.2: As per the final Order, for the following:

REASONS

7. **POINT NO.1** : I have already narrated the facts leading up to filing of the above IA No.1 and therefore, it is needless to reiterate the same narration once again here.

8. The PW1 has got marked the Certified Copy of the Judgment of the Trial Court in OS No.12/2012. The Ex.P1 shows that, the Plaintiffs No.1 and 2 have filed the said Suit for Partition and Separate Possession in respect of the Suit Schedule Properties. The Trial Court has dismissed the Suit in respect of the claim of the Appellant in seeking Partition and the Trial Court has Decreed the Suit of the Plaintiff No.2 in Part. During the cross-examination of the PW1, he has deposed about deaths of his two sons which was the reason for the delay. The Court could not consider the said ground as a reason for the delay for the reason of non production of any Death Certificates of the Appellant's sons by showing about their Deaths were occurred during the time of filing Appeal. But, the Objections of the Respondent No.1 filed to the IA No.1 shows that, *the Respondent No.1 is not denying the fact that, the Appellant is a Senior Citizen aged about 72 Years.* The Trial Court has allowed the Suit in respect of the claim of the Plaintiff No.2 but, it has Rejected the claim of the Appellant/Plaintiff No.1 in respect of entitlement for Partition in the Immovable Properties. In the Case of **Raheem Shan Vs Govind Singh** reported in **(2023) 18 SC 764**, the Hon'ble Apex Court has held that,

When the parties were litigating with regard to the right over immovable properties, the substantial rights were to be decided between the parties. The

delay could have been condoned and the Appeal could have been decided on merits.

Therefore, I am of the considered opinion that, the Appellant has made out grounds to condone the delay in filing the Appeal and I proceed to answer ***the Point No.1 in the Affirmative.***

9. **POINT NO. 2:** For the above discussion, I proceed to pass the following:

ORDER

The IA No.1 is here by allowed.

The Delay in filing the Appeal is condoned.

Posted for Arguments.

Sd/-

MADHUSUDHANA D K
Itinerary Senior Civil Judge
Huvinahadagali