

KAVP200015322022



IN THE COURT OF THE I ADDL.SENIOR CIVIL JUDGE
AT : BASAVANA BAGEWADI

:Present:

Smt.MANJULA D., B.Sc., LL.M.,
I Addl. Senior Civil Judge &
J.M.F.C., B.Bagewadi

Dated this the 2nd Day of June – 2026

R.A.No.10/2022

APPELLANT : Nabisab S/o Dastagirsab Malagi

-Versus-

RESPONDENTS : Mahadevi W/o Bhimappa Maalakari
and Others

PARITIES I.A.No.I

**Applicant/
Appellant**

Nabisab S/o Dastagirsab Malagi,
Age: 70 years, Occ: Agriculture and
Rtd Ex-service man,
R/o: Kousar Manzil, Neharu Nagar,
Gyangboudi, Vijayapura

(By Sri N.S.Kulkarni, Advocate)

-Versus-

**Opponents :
Respondents**

Mahadevi W/o Bhimappa Maalakari and
Others

(R-1 and 2 By Sri S.M.Gabbur, Advocate)
(R-3 and 4 Remained absent)

i	Provision under which the applications are filed	U/Sec. 5 of Limitation Act
ii	Relief sought for	With a prayer to condone the delay of 1221 days
iii	The date on which the application is filed	28.06.2022
iv	Number of the application	Five
v	The date on which the objections are filed by different opponents	-
vi	The date on which the orders were passed on the said application	02.06.2026
vii	The application filed by	Appellant
viii	Stage of the suit	For orders

(Smt.MANJULA D.)
I Addl. Senior Civil Judge
& J.M.F.C., B.Bagewadi

ORDERS ON I.A.No.I FILED U/Sec.5 of LIMITATION ACT

The I.A.No.I is filed by the applicant/appellant to condone the delay of 1221 days in preferring the appeal in the interest of justice.

2. In the affidavit annexed to the application, the appellant has stated that, as on the presentation of the plaint, he was not made as a party to the suit, without service of notice on I.A.No.III, he has been improperly placed ex-parte absent, but, suit summons has not been issued. Recently he came to know that, in respect of the suit land the respondent

No.1 and 2 have brought decree from the Court. Hence, as the summons itself has not been served on him, technically there is no delay in filing the appeal. Therefore, prayed to condone the delay in filing the appeal by allowing the interim application.

3. The respondents No.1 and 2 have filed objections to the application. Wherein it is contended that, the application filed by the appellant is false, frivolous, vexatious, hence, deserves to be rejected. It is stated that, the delay in filing the application is not explained. The application filed U/Sec.5 of Limitation Act is not maintainable as there is specific provision U/o 42 Rule 3 (A) of CPC. The reasons assigned in the applications are not sufficient to condone the delay.

4. It is further stated that, the order sheet discloses that, notice to the proposed respondent No.2 has been duly served through RPAD on 07.01.2012 and the present appellant remained absent, as such, the Trial Court has been placed the appellant as ex-parte and there is no irregular order. Hence, the application is not maintainable, as such, the question of condoning the delay does not arise at all. Among

these and other grounds, the respondent No.1 and 2 prays to reject the I.A.

5. Heard and perused the records.

6. The following points that would arise for consideration are;

POINTS

1. *Whether the appellant has made out sufficient cause to condone the delay in preferring this appeal?*

2. *What order?*

7. My findings to the above points as under:

Point No.1 : In the Affirmative

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

REASONS

8. **Point No.1**: This appeal is filed challenging the judgment and decree passed in O.S.No.14/2011 dated 23.01.2019 by the Addl.Civil Judge & J.M.F.C., B.Bagewadi.

9. On going through the case records, it is noticed that, the appellant has filed I.A.No.I seeking to condone the delay of 1221 days in preferring the appeal.

10. As could be seen from the records, judgment was delivered by the Trial Court on 23.01.2019. The present appeal is filed before this Court was on 28.06.2022 and same was registered on 29.06.2022. The appellant has specifically sworn to an affidavit assigning the reasons why he could not immediately approached the Appellate Court and to this fact, he has deposed on oath as well. The witness has deposed that, the suit summons has not been issued to him and he has been shown as ex-parte. Therefore, there was no reason or occasion to him to come to know of the suit having been filed against him in respect of the suit property. Recently, the subordinate of SLAO office have intimated him that in respect of the suit land the respondent No.1 and 2 have brought decree from the Court, thereafter only he came with respect to the suit having been filed against him. It is further stated that, the summons itself has not been served on him and technically speaking that there is no delay in filing the appeal, but, with abundant caution he is seeking to condone the delay in preferring the appeal.

11. On going through the cross examination of PW-1, in the cross examination nothing has been elicited from the mouth of PW-1 with respect to the delay which is helpful to the

respondent's contention. The principle of law laid down by the Hon'ble Apex Court in ***B.S.Sheshagiri Setti & others V/s State of Karnataka and others reported in 2015(7) Supreme 707***, is aptly applicable to the facts of present case, as such, the delay deserves to be condoned.

12. In the light of the above principles of law on going through the evidence placed on record, it can be gathered that, there is communication between the appellant and his counsel in preferring the present appeal. The appellant has knocked the doors of the justice seeking his substantive right in the property as his claim came to be rejected. Now the appellant by way of this appeal, intends to assert his substantive rights. Under these circumstances, if the present application is rejected, the substantive rights of the appellant will be defeated. The doors of the Court of justice will be closed for ever to the appellant. Keeping in mind the above facts, the light of the observations of the Hon'ble Apex Court ***in AIR 1987 SC 1353***, I hold that, the reasons assigned by the appellant needs to be accepted. Furthermore, if the application is allowed and appellant is permitted to submit his case on merit in this appeal and no prejudice will be caused to

respondents. With these observations, I answer ***Point No.1 in the Affirmative.***

13. **POINT NO.2:-** For the above said reasons on point No.1, I proceed to pass the following:-

ORDER

- (i) I.A.No.I by the appellant U/Sec.5 of Limitation Act is allowed.
- ii) The delay caused in preferring this appeal is condoned.
- iii) No order as to costs.

(Dictated to the Stenographer, directly on computer, typed by him, script corrected, signed and then pronounced in the open Court by me on this the 2nd day of June – 2026)

(Smt.MANJULA D.)
I Addl. Senior Civil Judge
& J.M.F.C., B.Bagewadi

ANNEXURE

List of witnesses examined on behalf of appellant:

PW-1 : Nabisab S/o Dastagirsab Malagi

List of documents exhibited on behalf of appellant:

Ex.P-1 : C.C. of order sheet in O.S.No.14/2011

Ex.P-2 : C.C. of judgment and decree passed in
O.S.No.14/2011

List of witnesses examined on behalf of respondents:

-Nil-

List of documents exhibited on behalf of respondents:

-Nil-

I Addl. Senior Civil Judge
& J.M.F.C.,B.Bagewadi