

IA No.375 of 2019, 376 of 2019 &
IA No.377 of 2019 in
OS No.144 of 2015

Date: 24.09.2020

IN THE COURT OF THE JUNIOR CIVIL JUDGE AT MADAKASIRA

**PRESENT: SRI A. RADHA KRISHNA MURTHY
JUNIOR CIVIL JUDGE, MADAKASIRA**

**THURSDAY, THE TWENTY-FOURTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY**

I.A.NO. 375 OF 2019

I.A.NO. 376 OF 2019 &

I.A.NO. 377 OF 2019

IN

O.S.NO. 144 OF 2015

(THROUGH VIDEO CONFERENCING)

BETWEEN:

01. M.Narayanappa S/o Pedda Narasappa, Aged 61 years,
02. M.Hanumanthappa S/o Pedda Narasappa, Aged 59 years,
03. M.Lakshminarasappa S/o Pedda Narasappa, Aged 56 years,
04. Malamma W/o Late Chinna Narasappa, Aged 69 years,
05. Jayamma W/o Late Chinna Narasappa, Aged 64 years,
06. Putta Rangamma W/o Late M.Narasimha Murthy, Aged 41 years,
07. Geethamma D/o Late Narasimha Murthy, Aged 29 years,
08. Ramya D/o Late Narasimha Murthy, Aged 27 years,
09. Hanumanthe Gowd S/o Late Narasimha Murthy, Aged 25 years,
10. Dayananda S/o Late Chinna Narasimhappa, Aged 49 years,
11. Jagadeesh Babu S/o Late Chinna Narasimhappa, Aged 47 years,
12. Suneel Kumar S/o Late Chinna Narasappa, Aged 44 years,
13. Hanumantharayappa S/o Late Chikka Hanumanthappa, Died by
LRs 18 to 20
14. Lakshminarasappa S/o Late Chikka Hanumanthappa,
Aged 69 years,
15. Hanumanthe Gowd S/o Late Sankarappa, Aged 29 years,
16. Yogesh S/o Late Sanna Sankarappa, Aged 29 years,
17. Kristappa S/o Late Chikka Hanumanthappa, Aged 59 years,

Petitioner No.5 is the Resident of Andralam Near Balya,
Madhugiri Taluk, Tumkur District

Petitioners 1 to 4, 6 to 17 are Resident of B.Rayapuram,
H/o Bullasamudram, Madakasira Taluk

... Petitioners / Plaintiffs

18. Neelavathi W/o Nagaraju, Aged 35 years,
19. Chikka Hanumanthe Gowd S/o Hanumanthappa, Aged 33 years,
20. Nagaraju S/o Hanumanthappa, Aged 32 years,

**IA No.375 of 2019, 376 of 2019 &
IA No.377 of 2019 in
OS No.144 of 2015**

Date: 24.09.2020

Petitioners 18 to 20 are Resident of B.Rayapuram,
H/o Bullasamudram, Madakasira Taluk

... Petitioners / Proposed Parties

AND

01. Malamma S/o Late Hanumantharayappa, Aged 74 years,
02. R.Narase Gowd S/o Late Hanumantharayappa, Aged 42 years,
03. Dooreppagari Adinarayana S/o Dooreppagari Siddappa,
04. C.S.Kayasree W/o C.A.Sreekanth, Aged 31 years,

Respondents 1 and 2 are Resident of B.Rayapuram, H/o Bullasamudram,
Madakasira Taluk

Respondent No.3 is Resident of Papireddypalli, Sreerangarajupalli Post,
Parigi Mandal, Hindupur Taluk

Respondent No.4 is Resident of D.No.4-2, Gandhi Bazar, Madakasira Taluk

... Respondents/Defendants

These three Petitions are coming before me for final hearing on 11.09.2020 in the presence of Sri P.Raghunatha Sastry, Counsel for Petitioners/Plaintiffs and for Proposed Petitioners 18 to 20 and Sri SP.Gopi Nath, Counsel for the 4th Respondent/4th Defendant and the Respondents/Defendants 1 to 3 were set ex-parte in the main suit itself, upon hearing both sides through Video Conferencing via BlueJeans Meeting Application, considering the material available on record and having stood over the matter for consideration till this day, the Court delivers the following:

:: COMMON ORDER ::

1. The Petition in IA.No.375/2019 is filed by the Petitioners/Plaintiffs and Proposed Petitioners 18 to 20 Under Sec.5 of Limitation Act 1963 to condone the delay of 292 days in filing Legal Heir Petition in the interest of Justice.

2. The Petition in IA.No.376 of 2019 is filed by the Petitioners/Plaintiffs and Proposed Petitioners 18 to 20 Under Order XXII Rule 9 of CPC to set aside the abatement order dated 29.11.2018 in the interest of Justice.

3. The Petition in IA.No.377 of 2019 is filed by the Petitioners/Plaintiffs and Proposed Petitioners 18 to 20 Under Order XXII Rule 3 R/w.Order VI Rule 17 of CPC to add the Proposed Petitioners 18 to 20 as Plaintiffs 18 to 20 in the main Suit.

4. On receipt of notice, the learned Counsel for Respondents/Defendants opposed the Petition and filed Counter in all the three Petitions contending that the Petitioners/Plaintiffs did not offer satisfactory explanation for the delay caused and the reason assigned by the Petitioners/Plaintiffs is incorrect and prayed the Court to dismiss all the three applications.

5. No oral or documentary evidence was adduced on either side.

6. Heard the learned counsel appearing for the Petitioners/Plaintiffs and Proposed Petitioners 18 to 20 and the learned counsel appearing for the Respondents/Defendants through Video conferencing via BlueJeans Meeting Application.

7. Perused the material available on record.

8. **Now the point germane for my determination is “Whether the delay of 292 days in filing Legal Heir Applications can be condoned and Whether the Proposed Petitioners 18 to 20 are necessary parties and their presence is necessary for the effective adjudication of the Suit ?”**

9. **P O I N T:**

9.1 The learned Counsel for Petitioners/Plaintiffs would contend that the Petitioners/Plaintiffs filed the main suit for Declaration of Title and for Possession of the Suit Schedule Property and pending Suit, the 13th Plaintiff/Hanumantharayappa died on 02.07.2018 leaving behind him, the Petitioners 18 to 20 as his legal heirs and they are the necessary parties for the effective adjudication of the Suit. It is also contended that the

Petitioners/Plaintiffs have not aware of the legal proceedings and so, they could not file the other two applications in time and there is a delay of (292) days in filing the other two applications and prayed the court to allow all the Applications.

9.2 The learned Counsel for the Respondents/Defendants would vehemently contend that the 13th Plaintiff/Lakshmi Narasappa filed Suit in OS.No.135 of 2016 and he also filed IA.366 of 2016 for Injunction Orders and the said Petition was made absolute. It is further contended that the reason assigned by the Petitioners/Plaintiffs is devoid of truth and prayed the Court to dismiss the Petitions.

9.3 It is an undisputed fact of record that the Petitioners/Plaintiffs filed the main suit for Declaration of Right and Title of the Petitioners/Plaintiffs in respect of the Suit Schedule Property and for Delivery of Possession. It is also an undisputed fact of record that the 4th Respondent/4th Defendant has been contesting the Suit by filing Written Statement and the Suit is at the stage of Trial.

9.4 As seen from the affidavit annexed to all the three Petitions, the 13th Plaintiff viz., Hanumantharayappa died on 02.07.2018 and the Photocopy of the Death Certificate is also filed and there is no dispute with regard to the same. The affidavit also discloses that the Petitioners 18 to 20 are the Legal Heirs of Deceased Hanumantharayappa. As per the Counter of the 4th Respondent/ 4th Defendant, it is not her case that the Petitioners 18 to 20 are not the legal heirs of Deceased Hanumantharayappa and some other persons are the legal heirs. Thus, it can be said that the Petitioners 18 to 20 are the legal heirs of Deceased Hanumantharayappa.

9.5 According to Sub rule (2) of Rule 3 of Order XXII of CPC, the Suit shall abate so far as the deceased Plaintiff is concerned when, within time limited by law, no application is made as contemplated under Sub rule (1) of Rule 3 of Order XXII of CPC, to add the legal representatives of deceased Plaintiff.

9.6 But, as per Sub rule (2) of Rule 9 of Order XXII of CPC provides that the legal representative of a deceased 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.

9.7 In **Ram Nath Sao @ Ram Nath Sahu and others - Vs - Gobardhan Sao and others**¹, it was held by the Hon'ble Supreme Court that *"Expression 'sufficient cause' within meaning of Sec.5 of Limitation Act or Order 22, Rule 9 of Civil Procedure Code should be given liberal constructions so as to advance substantial justice and delay neither mala fide nor intentional, can be condoned."*

9.8 In this case the reason assigned by the Petitioners/Plaintiffs is that they are not aware of the legal proceedings and as such they could not file the Applications in-time. It is true that the 4th Respondent/ 4th Defendant contended that the 13th Plaintiff by name Lakshmi Narasappa (in fact he is the 14th Plaintiff in the suit but not 13th Plaintiff) filed Suit in OS.No.135 of 2016 and therefore, he is aware of legal proceedings. Mere filing another Suit cannot be said that the 14th Plaintiff has aware of legal proceedings why because, the aggrieved person approaches the Advocate, narrates his case and ultimately the Advocate will continue the legal proceedings before the Courts. Further, the main suit is for Declaration of Rights and Title and for Recovery of Possession of the Suit Schedule Property and there is no dispute as to the fact that the Petitioners 18 to 20 are the legal heirs of Deceased 13th Plaintiff and therefore, being the legal heirs, the Petitioners 18 to 20 are the necessary parties for effective adjudication of the Suit to decide rights of the parties. Furthermore, as observed by the Hon'ble Supreme Court in the above judicial precedent, the expression "sufficient cause" should be liberally construed to advance the substantial justice to the parties. Moreover, procedure is the hand-maid of justice. In case, this Petition is not allowed and the Petitioners 18 to 20 are not added as Plaintiffs in the main suit, it is prone to another round of litigation since the main suit itself is for

¹AIR 2002 SC 1201

Declaration of Rights and Title. Further, the delay in filing application can be compensated by imposing costs as provided Under Sub Rule (2) of Rule 9 of Order XXII of CPC. Therefore, this Court is of the considered opinion that the reason assigned by the Petitioners/Plaintiffs in filing IA.No.375 of 2019 is sufficient cause to condone the delay of (292) days and the Petitioners 18 to 20 are the necessary parties for the effective and complete adjudication of the Suit. This point is answered accordingly.

10. IN THE RESULT, the Petition in IA.No.375 of 2019 is allowed and delay of (292) days in filing the Other Two Applications, is hereby condoned on payment of costs of Rs.500/- to the 4th Respondent/4th Defendant.

11. FURTHER, the Petition in IA.No.376 of 2019 is allowed and the Abatement Order dated 29.11.2018 is hereby set aside so far as 13th Plaintiff is concerned subject to payment of costs imposed in IA.375 of 2019.

12. FURTHER, the Petition in IA.No.377 of 2019 is allowed. The Petitioners/Plaintiffs are permitted to add the Proposed Petitioners 18 to 20 as Defendant Nos.18 to 20 in the main suit and for all consequential amendments.

Typed to my dictation by the Stenographer Grade-II, corrected and pronounced by me through Video Conferencing via BlueJeans Meeting App on this the 24th day of September 2020.

**JUNIOR CIVIL JUDGE
MADAKASIRA**

APPENDIX OF EVIDENCE

:: NIL ::

**JUNIOR CIVIL JUDGE
MADAKASIRA**