

KASM310061772021



**IN THE COURT OF I ADDITIONAL CIVIL JUDGE AND JMFC,
BHADRAVATHI**

:Present:

**Smt. Nasira Banu, B.A., (Law), LLB.
I Addl. Civil Judge and J.M.F.C.,
Bhadravathi.**

Misc.No.16/2021

Dated on this the 31st day of July, 2026

Petitioner:

T. Deepak Kumar,
S/o. Late Tukaram Rao Gaikwad
aged about 55 years,
agriculturist, R/o Karimariyamma Temple,
opposite to Akkamahadevi School, Subhash
Nagara, NMC left side,
Bhadravathi.

(By Sri.RVM., Adv.,)

Vs.

Respondents:

1. Smt. Indiravathi Bai
W/o. Basavantha Rao,
D/o. Krishnoji Rao Gaikwad
aged about 65 years,
R/o. 6th cross, 4th main,
Siddheshwara Nagara,
Shivamogga.

2. T. Govindarajan,
S/o. Late Tukaram Rao Gaikwad,
aged about 51 years,
agriculturist and employee
at Kirloskar Toyota Textile Ltd,
Jigani Industrial area,
Anekal Taluk, Bangalore.
3. Smt. Uma Bai,
W/o. Shankar Rao Salanke,
aged about 48 years,
R/o near Ganapathi Temple,
2nd Cross, NMC right side,
Bhadravathi.
4. Smt.Nirmala Bai, W/o. Kiran Jadhav,
Aged about 54 years,
R/o. KEB quarter,
JPS colony Paper Town Post,
Bhadravathi.
5. Smt. Ranu Bai
W/o Laxman Rao Salanke,
aged about 48 years,
R/o. Ambedkar Circle,
Taluk Office Road, Old Town,
Bhadravathi.
6. Narayana Rao Gaikwad,
S/o. Maruti Rao Gaikwad,
Master, aged about 50 years
R/o 4th Main, 6th cross,
Siddeshwaranagar,
near Chowdeshwari Temple,
Shivamogga.
7. Smt. Devaki Bai,
W/o. Anil Sindhe,
aged about 43 years,

R/o. Dapalapuriyath Road,
Taluk Jath, Sangli District,
Maharashtra State.

8. Shivaji Rao Gaikwad,
S/o. Maruti Rao Gaikwad,
aged about 41 years,
Employee Manjushri techno pack Ltd,
No. 71, 72 Bidadi Industrial Area,
Bidadi, Ramanagara District.
9. Smt. Sangeetha,
W/o. Lakshman Joruwar,
aged about 40 years,
Sri Sai Ganesha building,
1st floor, A wing,
10F No., Dahivalli Karcha,
Rayagada District,
Maharashtra State.
10. Smt. Mahalakshmi Bai,
W/o. Manjunatha Rao Gaikwad,
Aged about 70 years,
R/o. AIR staff quarters,
JPS colony Paper Town post,
Bhadravathi.
11. Smt. Kanakalakshmi Bai,
W/o. Arjun Rao Jadav,
aged about 55 years,
R/o. Kerebeeranahalli,
Holehonnur Hobli,
Bhadravathi Taluk.
12. Smt. Pushpavathi Bai,
W/o. Suresh Kharade,
aged about 51 years,
housewife,

R/o. Anegola, Kikkeri,
Mandya Taluk.

13. Smt. Shobhavathi Bai,
W/o. Vijaya Pawar,
aged about 47 years,
R/o. AIR quarters,
JPS Colony Paper Town,
Bhadravathi.
14. Balaram Gaikwad,
S/o. Manjunatha Gaikwad,
aged about 50 years,
R/o. AIR quarters,
JPS Colony Paper Town,
Bhadravathi.
15. Krishnoji Rao Gaikwad,
S/o. Manjunath Gaikwad,
aged about 42 years,
R/o. AIR quarters,
JPS Colony Paper Town,
Bhadravathi.
16. Smt. Roopa Gaikwad,
W/o. Niranjana,
aged about 40 years,
R/o. AIR quarters,
JPS Colony Paper Town,
Bhadravathi.
17. Smt. Teeku Bai,
W/o. Jothilingarao Gaikwad,
aged about 55 years,
housewife, R/o. Komaranahalli,
Devarahalli Post, Bhadravathi Taluk.
18. Smt. Smitha Bai,
D/o. Jyothilingarao Gaikwad,

aged about 37 years
R/o. Komaranahalli, Devarahalli,
Bhadravathi Taluk.

19. Sandeep Gaikwad,
S/o. Jyothilinga Rao Gaikwad,
aged about 36 years,
R/o. Komaranahalli Village,
Debvrahalli Post, Bhadravathi Taluk
20. Subbarao Gaikwad,
S/o. Jyothilingarao Gaikwad,
aged about 35 years,
R/o. Komaranalli village,
Devrahalli Post, Bhadravathi Taluk.

(R-1 and 4 to 9 by Sri. SNR Adv.,)
(R-2 and R-10 to 20 Exparte)
(R-3 absent)

ORDER ON MAIN PETITION

The petitioner has filed present petition under Order IX Rule 13 R/w Section 151 of CPC to restore OS.No.320/2015.

2. In the petition it is contended that the petitioner is the defendant No.1 in O.S No.320/2015. The respondent No. 1 was the plaintiff and respondent no.2 to 20 were the defendants No.2 to 20 in O.S No.320/2015. It is further submitted that first respondent filed suit for the relief of partition in O.S No.320/2015. After receipt of summons, the petitioner approached respondent No.1 and she agreed to withdraw

the case by stating that suit is filed at the request of her son and daughters. By believing the version of respondent No.1, the petitioner had not filed written statement in the original suit. The first respondent filed false suit for the relief of partition in respect of suit properties by describing the same as joint family properties. The first respondent is not at all entitled for share in the suit schedule properties. The first respondent agreed to withdraw the case. Hence, the petitioner did not take interest to conduct the case. Meanwhile one Hanumantarao Gaikwad and others filed false suit for partition with respect to very same schedule properties before the Honorable Additional Senior Civil Judge and JMFC, Bhadravathi against the petitioner and respondent No. 1 to 20. Again the respondent No.1 agreed to withdraw the case filed by her before this court by expressing her anguish regarding false suit filed by Hanumanth Rao and others against her and also against petitioner and respondent No.2 to 20. Due to assurance given by respondent No.1, the petitioner did not participate in O.S No. 320/2015. But the petitioner came to know through respondent No.6/Defendant No.6 that the above case is decreed on 08.04.2021. Immediately the petitioner approached his advocate on the same day and applied for certified

copies of judgment and decree on 24.05.2021. The respondent No.1/plaintiff is not at all entitled for 1/5th share in the suit properties and she is not at all a co-parcener and not at all a member of Hindu joint family. By suppressing true and material facts, respondent No. /plaintiff filed suit in order to grab the suit properties. The petitioner obtained certified copies of judgment and decree on 01.07.2021 and he came to know that the plaintiff led evidence by suppressing true facts and got decree behind the back of petitioner. After obtaining certified copies, the petitioner got misplaced certified copies in his friend's transport office. After thorough search, this petitioner recently traced out certified copies. Due to COVID-19 pandemic disease, the petitioner is not able to file the case within time. The delay in filing case is not intentional, but it is for the above-stated bonafide reason. The petitioner has good grounds to defend the false case by filing his written statement. If the petitioner is not permitted to contest the case by setting aside the exparte decree passed against him, the petitioner will be put to untold hardship. Non appearance of the petitioner and non filing of written statement by him in O.S No. 320/2015 is not intentional one, but for the above said bonafide reason. If the exparte

decree is not set aside, the petitioner will be put to untold hardship, inconvenience and irreparable loss and injury. On these grounds the petitioner prayed to allow the petition.

3. After issuing notice the respondent, respondent No.1 and 4 to 9 appeared through their counsel. Respondent No.2 and 10 to 20 placed ex parte. Respondent No.3 is absent.

4. The respondent No.1 filed objection stating that suit properties originally belonged to father of respondent no.1 by name Krishnoji Rao and it was his self acquired properties. The respondent no.1/plaintiff's father Krishnoji Rao had 5 children namely Thukaram Rao, Maruthi Rao, Manjunath Rao, Jyothilinga Rao and Indravathi Bai i.e. respondent no.1. His male children passed away leaving behind their legal heirs. The father of respondent no.1 passed away in the year 1950 leaving behind the petitioner and respondents and also suit properties. The respondent no.1/plaintiff being the daughter of Krishnoji Rao is entitled to get equal share along with 4 male children. The respondent no.1/plaintiff approached petitioner and other respondents and demanded her legal share in the suit properties. The petitioner and

other respondents refused to allot share to her. The respondent no.1/plaintiff has filed suit before this court in O.S No. 320/2015. This court issued summons to the petitioner and other respondents. The petitioner and respondents appeared through their counsel. The court has given opportunities to file written statement. The suit was filed on 16.07.2015 and judgment was pronounced on 18.04.2021 after 6 years. The petitioner/defendant No.1 appeared through his advocate and not filed written statement after 6 years. The petitioner has not given proper and bonafide reason to file the above said petition. The reason pleaded in the petition is absolutely false and far away from the truth. The present petition is filed to harass the respondent no.1. The petition is barred by law of limitation. On these grounds, prayed to dismiss the petition with costs.

5. In order to prove his case, the petitioner examined himself as PW1 and got marked 03 documents as Ex.P1 to 3. The respondent No.1 has led evidence as RW.1 but no documents are marked on her behalf.

6. This court heard the arguments of counsels appearing for both parties.

7. The following points arise for determination of this court:

POINTS

1. *Whether the petitioner has made out sufficient grounds to restore OS No.320/2015?*
2. *What order?*

8. My findings on the above points are as under:

Point No.1: In the Negative.

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

REASONS

9. **Point No.1:** The petitioner has filed present petition under Order IX Rule 13 read with Section 151 of CPC to restore OS.No. 320/2015.

10. In order to prove his case the petitioner got examined himself as PW1 and got marked 03 documents as Ex.P1 to 3.

11. The reasons assigned by the petitioner in his petition for filing present petition and delay in filing the petition is that he engaged his advocate in original suit and he was under the impression that the said suit will be withdrawn by the plaintiff as per assurance given by

her to the petitioner. Further it is contended that the petitioner lost certified copies of judgment and decree and due to Covid -19 he could not file the present petition in time. The petitioner has produced Certified copy of Judgment and decree passed in O.S 320/2015 which shows that the suit filed by the plaintiff in O.S.No.320/2015 is for the relief of partition and the petitioner appeared in the said suit through his counsel. The evidence was commenced on 04.07.2019 and judgment was pronounced on 18.04.2021. Hence, it shows that more than 5 years the suit was pending for consideration. Thus, the document on record show that the petitioner appeared in OS No. 320/2015 but failed to contest the case by filing written statement. The petitioner contended that, he was under impression that case will be withdrawn. Further the petitioner himself has produced copy of judgment passed in O.S No.58/2016, the said judgment shows that one Hanumantharao Gayakwad filed suit for the relief of partition before Honorable Additional Senior Civil Judge and JMFC, Bhadravathi. In the said suit the petitioner herein appeared through his counsel and contested the case. The said suit was dismissed by holding that the suit properties are the self acquired properties of Krishnoji Rao Gayakwad and Rangu Bai.

12. The petitioner contended that the respondent No.1 assured him that she would withdraw the case. The petitioner of this case appeared in O.S No.58/2016 and contested the said case. Such being the case he should have properly explained what prevented him from enquiring about suit filed by the respondent No.1. The petitioner appeared in the said case and led evidence as DW1 which shows that he is aware about the court proceedings. When such is the case he could have verified about the suit filed in O.S No.320/2015. He could have atleast verified whether the suit is withdrawn by the plaintiff. The PW1 during his cross examination deposed that ಅಸಲು ದಾವೆ ಸಂಖ್ಯೆ 58/2016 ರಲ್ಲಿ ನಮ್ಮ ವಕೀಲರು ನನ್ನ ಪರವಾಗಿ ಪ್ರತಿವಾದಪತ್ರ ಸಲ್ಲಿಸಿದ್ದರು ಎಂದರೆ ಸರಿ. ಸದರಿ ದಾವೆ ಸತತ 6-7 ವರ್ಷ ವಿಚಾರಣೆ ನಡೆಯಿತು ಎಂದರೆ ಸರಿ. ಆಗ ನಾನು ನಮ್ಮ ವಕೀಲರನ್ನು ನಿರಂತರವಾಗಿ ಭೇಟಿಯಾಗುತ್ತಿದ್ದೆ ಎಂದರೆ ಸರಿ. ಆ ಸಂದರ್ಭದಲ್ಲಿ ಅಸಲು ದಾವಾ ಸಂಖ್ಯೆ 320/2015 ರ ದಾವೆ ಸಹ ಚಾಲ್ತಿಯಲ್ಲಿರುವ ವಿಷಯ ನನಗೆ ಗೊತ್ತಿತ್ತು ಎಂದರೆ ಸರಿ. ಸದರಿ ವಿಷಯ ಗೊತ್ತಿದ್ದರೂ, ಅಸಲು ದಾವೆ ಸಂಖ್ಯೆ 320/2015 ರಲ್ಲಿ ಪ್ರತಿವಾದ ಪತ್ರ ಯಾವ ಕಾರಣಕ್ಕೆ ಸಲ್ಲಿಸಲಿಲ್ಲ ಎಂಬ ಕಾರಣಕ್ಕೆ ಸಾಕ್ಷಿ ಸದರಿ ದಾವೆಯ

ವಾದಿಯನ್ನು ನಾವು ಭೇಟಿಯಾಗಿ ಮಾತುಕತೆ ನಡೆಸಿದಾಗ ಆಕೆ ದಾವೆ ವಾಪಸ್ಸು ಪಡೆಯುತ್ತೇನೆ ಎಂದು ಹೇಳಿದ್ದರು ಹಾಗಾಗಿ ಪ್ರತಿವಾದ ಪತ್ರ ಸಲ್ಲಿಸಿರಲಿಲ್ಲ ಎನ್ನುತ್ತಾರೆ.

ಆಕೆ ಹೇಳಿದಂತೆ ದಾವೆಯನ್ನು ವಾಪಸ್ಸು ಪಡೆದರೂ ಇಲ್ಲವೋ ಎಂಬುದನ್ನು ಖಾತ್ರಿ ಮಾಡಿಕೊಂಡಿದ್ದೀರಾ ಎಂಬ ಪ್ರಶ್ನೆಗೆ ಸಾಕ್ಷಿ ಆಕೆಯ ಮಾತಿನ ಮೇಲಿನ ನಂಬಿಕೆಯಿಂದ ಖಾತ್ರಿ ಮಾಡಿಕೊಳ್ಳಲಿಲ್ಲ ಎನ್ನುತ್ತಾರೆ. ನಿಮ್ಮ ವಕೀಲರು ಸದರಿ ವಿಷಯವನ್ನು ಖಾತ್ರಿಪಡಿಸಿಕೊಂಡರೇ ಎಂಬ ಪ್ರಶ್ನೆಗೆ ಸಾಕ್ಷಿ ಇಲ್ಲ ಎನ್ನುತ್ತಾರೆ. Thus the PW1 admitted that suit in O.S No.58/2016 was pending for 6-7 years and he was contacting his advocate throughout said proceedings and at that time he was aware about pendency of O.S No.320/2015. But only explanation from the side of petitioner is that the respondent assured that she would withdraw her suit. But the evidence of PW1 also shows that he had not made attempts to verify about withdrawal of case. It is nothing but negligence on the part of the petitioner.

13. In the above petition only point is to be considered whether petitioner made out sufficient cause to set aside the decree. The above

petition is filed under Order 9 Rule 13 of CPC. Hence, it is beneficial to refer Order 9 Rule 13 of CPC, which reads as follows:

“13. Setting aside decree ex parte against defendant: *In any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:*

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of other defendants also:

[Provided further that no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim]

[Explanation: Where there has been an appeal against a decree passed ex parte under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside ex parte decree]"

14. As per the said provision, it provides for setting aside ex parte decree on two grounds.

That the summons was not duly served or

That the defendant was prevented by sufficient cause from appearing when the case was called on for hearing. If either of these conditions are satisfied, the court can set aside the decree.

15. But in the above case, it is not the case of petitioner that the summons was not duly served. In the above case as already stated summons was duly served to the petitioner. Hence, the first ingredient of said provisions does not apply to the present case. In this case the petitioner shall show that he was prevented by sufficient cause from appearing before the court. To prove said contention the petitioner has not made any attempts. The only contention of the petitioner is that the plaintiff assured him that she would withdraw the suit filed by her. But

except said self serving statement there are no corresponding documents to support the said contention. The cause mentioned by the petitioner do not seems to be sufficient cause prevented him from appearing before the court. When the suit in O.S No. 320/2015 was pending the petitioner was appearing before the court in another suit, it cannot be believed that he was under impression that the plaintiff had withdrawn the case. Hence, he should have made attempt to appear before the court or contacted his advocate to proceed with the case or to know about the case. Hence, this court is of opinion that the petitioner failed to prove that the decree and judgment passed in O.S No.320/2015 is liable to set aside. Accordingly, Point No.1 is answered in the ***Negative***.

16. **Point No.2:-** In view of the foregoing observations and discussions, this court proceeds to pass the following:

ORDER

IA No.1 filed by the petitioner under Section 5 of Limitation Act is hereby dismissed.

Consequently, the petition filed by the petitioner under Order IX Rule 13 read with Section 151 of CPC is hereby dismissed.

No order as to cost.

(Dictated to the stenographer, typed by her, corrected and then pronounced by me in open court on this 31st day of July 2026).

(Nasira Banu)
I Addl. Civil Judge & JMFC,
Bhadravathi.

ANNEXURE

List of witnesses examined for petitioner:

P.W-1 : T. Deepak Kumar

List of documents marked for petitioner:

Ex.P.1 and 2 : Certified copy of Judgment and Decree
O.S No.320/2015

Ex.P.3 : Certified copy of Judgment in
O.S 56/2018.

List of witnesses examined for Respondent:

RW1 : Indiravathi Bai

List of documents marked for defendant:

- NIL -

I Addl. Civil Judge & JMFC,
Bhadravathi.