



IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 25TH DAY OF SEPTEMBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

REGULAR SECOND APPEAL NO. 1580 OF 2005 (PAR)

BETWEEN:

1. HAZARABEE W/O SHAMEED SAB,
AGED ABOUT 62 YEARS, OCC: HOUSEHOLD,
R/O SINDHANOOR-584 101.
2. MUNNIMA W/O LAL AHMED,
AGED ABOUT 54 YEARS, OCC: HOUSEHOLD,
R/O KALMANGI VILLAGE,TQ. SINDHANOOR-584 101.
3. HUSSAIN BEE W/O KHAJA SAB,
AGED ABOUT 44 YEARS, OCC: HOUSEHOLD,
R/O SALGUNDA VILLAGE,
TQ. SINDHANOOR-584 101.
4. MEHABOOB BEE W/O RAMAZAN SAB,
AGED ABOUT 42 YEARS, OCC: HOUSEHOLD,
R/O SINDHANOOR-584 101.

Digitally signed
by RENUKA
Location: HIGH
COURT OF
KARNATAKA

...APPELLANTS

(BY SRI ARUNKUMAR AMARGUNDAPPA, ADVOCATE)

AND:

1. IMAM BEE W/O MEHABOOB SAB,
AGED ABOUT 47 YEARS, OCC: HOUSEHOLD,
R/O PWD CAMP SINDHANOOR-584 101.
2. BEGUM W/O MEHABOOB SAB,



AGED ABOUT 50 YEARS, OCC: HOUSEHOLD,
R/O PWD CAMP, SINDHANOOR-584 101.

...RESPONDENTS

(BY SRI MAHANTESH PATIL, ADVOCATE FOR R1 AND R2)

THIS RSA IS FILED UNDER SECTION 100 OF CPC PRAYING TO ALLOW THE APPEAL BY SETTING ASIDE THE JUDGMENT AND DECREE PASSED BY THE ADDITIONAL DISTRICT JUDGE AND PO FTC-III, RAICHUR, IN RA.NO.65 OF 2005 DATED 16.04.2005, AND FURTHER THIS HON'BLE COURT MAY BE PLEASED TO CONFIRM THE JUDGMENT AND DECREE OF THE ADDITIONAL CIVIL JUDGE (JR.DVN) AT SINDHANOOR, IN O.S.NO.20 OF 2002 DATED 30.06.2004.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE)

I.A. No.1/2023 is filed to condone the delay of 3068 days in filing the application to recall the order dated 21.09.2022 by which the appeal is dismissed for non-prosecution.

2. Learned counsel appearing for the respondents have filed objection to the said application on the premise that the appellants have not been diligent in prosecuting the appeal, the application for condonation of delay is not supported by affidavit disclosing sufficient reasons, the appellants have been



grossly negligent and they have prayed for dismissal of the appeal.

3. This Court has considered the application for condonation of delay as well as the application for recalling the order dated 21.09.2012 along with the merits of the case.

4. The suit is one for partition and separate possession. The suit is filed by the sisters against the brother's two wives. The suit is decreed holding that the plaintiffs have 2/3rd share in the suit schedule properties. The defendants filed the appeal before the First Appellate Court. The First Appellate Court allowed the appeal and set-aside the judgment and decree passed by the Trial Court and consequently, the suit is dismissed. Hence, the plaintiffs are before this Court.

5. As already noticed, the appeal was dismissed for non-prosecution on 21.09.2012. The appeal was not yet admitted.

6. Learned counsel Sri Arunkumar Amargundappa taking through the facts of the case would submit that the property originally belonged to Imamsab and his wife was Khasimabee. It is stated that both of them died long back living behind one



son Mehaboob Sab and four daughters, who are the plaintiffs. Mehboob Sab died on 26.12.1999. He had two wives i.e. Begum and Imambbee, who are defendants 1 and 2. The plaintiffs claimed that the property belonged to Imamsab and they had 2/3 share in the suit properties after the death of Imamsab, and his wife Khasimabee. Thus, they claimed partition and separate possession. The Trial Court accepted the plaintiffs' plea and decreed the suit. However, the First Appellate Court on erroneous assumption of fact and law dismissed the suit by allowing the appeal.

7. Learned counsel for the appellants also urged that the First Appellate Court took a view that the children of Imambbee, second wife of Mehaboob Sab are not made parties to the suit and the suit is not maintainable for want of necessary parties. It is his submission that the parties being the Mohammedans, the children of Imambbee cannot claim any right in the property as long as Imambbee is alive, as such, the findings that the suit for partition is not maintainable for want of necessary parties is erroneous.



8. It is submitted that the property originally belonged to propositus Imamsab and he transferred the property in the name of his son Mehaboobsab through an application which is not a valid transfer in the eye of law. Thus, Mehaboobsab was not the absolute owner of the property and the First Appellate Court without noticing this fact, only on the basis of record of rights in the name of Mehaboob sab which were later transferred in the name of Imambree, erroneously dismissed the suit.

9. To substantiate his contention that the property originally belonged to Imamsab, he has filed an application under Order XLI Rule 27 of the Code of Civil Procedure wherein the mutation entry No.38 is produced. From the said mutation, it is noticed that Imamsab the propositus had transferred the property in the name of his son Mehaboobsab in the year 1973 by way of a vardhi and without there being any registered document. By placing reliance on this document he would contend that Imamsab was not the absolute owner of the property, and the plaintiffs also inherited the property.



10. Learned counsel appearing for the respondents would contend that the appeal cannot be restored as it is dismissed more than 10 years ago and even on merits, it is submitted that the property was standing in the name of the 2nd defendant Imambee when the suit was filed. The property was transferred to Imambee by her husband when he married the 2nd defendant and the plea that the property originally belonged to Imamsab and he transferred the property through Vardhi to his son Mehaboobsab was not raised before the Trial Court and no document is produced before the Trial Court and even before the First Appellate Court, no such document is produced. The additional document is produced in the year 2024, almost 21 years after the filing of the appeal and 12 years after the dismissal of the appeal for non-prosecution. It is stated that portion of the properties have been transferred or agreed to be transferred to third parties after the dismissal of the appeal for non-prosecution and no case is made to restore the appeal or to allow the appeal on merits.

11. This Court has considered the contentions raised at the bar and perused the records.



12. Admittedly, when the suit was filed the property was standing in the name of Imambbee, the second wife of Mehaboobsab. Mehaboobsab died in the year 1999. The suit was filed in the year 2002. Though Mr.Arunkumar Amargundappa would urge that the property originally belonged to Imamsab - the father-in-law of 2nd defendant, before the Trial Court and the First Appellate Court no such document is produced and the document is sought to be produced for the first time 19 years after the filing of the appeal to contend that the property originally belonged to Imamsab and he through Vardhi transferred the property to his son Mehaboobsab and said transfer is illegal.

13. It is to be noticed that the said transfer is has taken place in the year 1973. Mohammadan law recognizes oral gift.

14. The contention of Sri.Arunkumar that the plea of oral gift deed was not raised by the 2nd defendant and it cannot be said that there is a oral gift in favour of Mehaboobsab cannot be accepted for the simple reason that 2nd defendant came to the family of Mehaboobsab in late 1990s. Defendant No.2 cannot be expected to plead and prove the oral gift which



might have taken place in 1973 in favour of her husband. The husband was not alive when the suit was filed. The transfer of property in the name of her husband was not questioned in the plaint. Thus, the defendant had no occasion to plead defending the said transfer which has taken place in the year 1973. It is an admitted position that from 1973 onwards the property stood in the name of Mehaboobsab. After the death of Imamsab, the plaintiffs have not chosen to file a suit claiming share in the property. Under these circumstances, this Court does not find any error in the judgment of the First Appellate Court dismissing the suit on the premise that the property stood in the name of Imambee when the suit was filed and the property was not proved to be the joint property of the plaintiffs and their brother Mehaboobsab.

15. This Court does not find any reason to allow the application for production of additional documents. Unreasonably long delay in filing the application for additional documents is not properly explained. And in addition to that, the appeal is also dismissed for non-prosecution in the year 2012. The reasons assigned for condoning the delay in filing the application for restoring the appeal are not satisfactory.



16. Though the finding of the First Appellate Court that the children of Imambbee are necessary parties to the suit is erroneous, the suit is liable to be dismissed for the reasons recorded above.

17. For the aforementioned reasons, this Court does not find any substantial question of law. Accordingly, the application for condonation of delay and the application for recalling the order dismissing the appeal for non-prosecution are rejected. Since, the appeal is also considered on merits, the appeal is also **dismissed** on merits.

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

BRN
List No.: 1 Sl No.: 11
CT:PK