



CNR: KAHC010023962021

NC: 2026:KHC:36999
RFA No. 100 of 2021
C/W RFA No. 236 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE S RACHAIAH

REGULAR FIRST APPEAL NO. 100 OF 2021 (PAR)

C/W

REGULAR FIRST APPEAL NO. 236 OF 2021

IN RFA No. 100/2021

BETWEEN:

1. SMT. C. S. SUGANADEVI,
W/O. LATE K. RAJASHEKHARACHARY,
SINCE DEAD BY HER
LEGAL REPRESENTATIVE,
SRI. TRILOCHANA KUMAR,
S/O. LATE K. RAJASHEKHARACHARY.
2. SRI. TRILOCHANA KUMAR,
S/O. LATE K. RAJASHEKHARACHARY,
AGED ABOUT 56 YEARS,
R/AT NO.544,
2ND MAIN,
11TH CROSS,
MICO LAYOUT,

Digitally
signed by
SUSHMA
LAKSHMI
B S
Location:
High Court
of
Karnataka



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BTM LAYOUT,
BENGALURU - 560 076.

...APPELLANTS

(BY SRI. G. S. VENKAT SUBBA RAO., ADVOCATE)

AND:

SMT. SATHYA VANI,
D/O. LATE K. RAJASHEKHARACHARY,
W/O. SRI MURALIDHARA,
AGED ABOUT 54 YEARS,
R/AT NO.926/1,
2ND MAIN, 56TH CROSS,
4TH BLOCK,
RAJAJINAGAR,
BENGALURU - 560 010.

...RESPONDENT

(BY SRI. K. N. NITISH., ADVOCATE)

THIS RFA IS FILED UNDER SECTION 96 OF CPC AGAINST
THE JUDGMENT AND DECREE DATED 31.01.2014, PASSED IN
OS.No.7338/2007, ON THE FILE OF THE VII ADDITIONAL CITY



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CIVIL AND SESSIONS JUDGE, BANGALORE CITY, DECREERING
THE SUIT FOR PARTITION AND ETC.

IN RFA NO. 236/2021

BETWEEN:

1. SMT. C. S. SUGUNADEVI,
W/O. LATE K. RAJASHEKHARACHARY,
SINCE DEAD BY HER
LEGAL REPRESENTATIVE
SRI. TRILOCHANA KUMAR
S/O LATE K. RAJASHEKHARACHARY,
2. SRI. TRILOCHANA KUMAR
S/O LATE K. RAJASHEKHARACHARY,
AGED ABOUT 56 YEARS,
R/AT NO.544,
2ND MAIN, 11TH CROSS,
MICO LAYOUT,
BTM LAYOUT,
BENGALURU - 560 076.

...APPELLANTS

(BY SRI. G. S. VENKAT SUBBA RAO., ADVOCATE)



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AND:

SMT. SATHYA VANI,
D/O. LATE K. RAJASHEKHARACHARY,
W/O. SRI. MURALIDHARA,
AGED ABOUT 54 YEARS,
R/AT NO.926/1,
2ND MAIN,
56TH CROSS,
4TH BLOCK,
RAJAJINAGAR,
BENGALURU - 560 010.

...RESPONDENT

(BY SRI. K. N. NITISH., ADVOCATE)

RFA FILED UNDER SEC.96 OF CPC., AGAINST THE ORDER DATED 18.02.2019, PASSED IN FDP No.91/2016, (IN OS No.7338/2007), ON THE FILE OF THE VII ADDL. CITY CIVIL AND SESSIONS JUDGE (CCH No.19) AT BENGALURU, ALLOWING THE PETITION.

THESE APPEALS ARE, COMING ON FOR FURTHER ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:



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CORAM: HON'BLE MR. JUSTICE S RACHAIAH

ORAL JUDGMENT

In RFA.No.100/2021

1. Heard on I.A.No.1/2021.
2. The applicants / appellants have filed an application for condonation of delay of 2154 days in filing the appeal. The averments of the affidavit would indicate that he is the second appellant in this case. He, being aggrieved by the judgment and decree dated 31.01.2014 passed by the VII Additional City Civil and Sessions Judge, Bengaluru, (for short, 'Trial Court') in O.S.No.7338/2007 - a suit for partition and separate possession, wherein the Trial Court has decreed the suit by granting 1/3rd share to the plaintiff / respondent herein, who is his sister, has preferred this appeal.
3. It is submitted that the scheduled property was acquired by his father way back in the year 1980 and thereafter,



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he had made necessary arrangements and got the construction done in the said property.

4. It is further submitted that, according to him, delay had occurred as he was taking care of his old-aged mother and he was not aware about the decree passed against him. However, subsequently he learnt that the decree came to be passed on 31.01.2014.
5. Further, he submitted that he is a chronic patient suffering from asthma, and he is diabetic, and had been hospitalized for a considerable period of time.
6. It is further submitted that the plaintiff had initiated Final Decree Proceedings (for short 'FDP') before the Trial Court in FDP.No.91/2016 and in the said proceedings also, he had not participated as there was no effective service of notice on him. However, the said FDP has also attained finality and the property has already been divided by metes and bounds by putting the plaintiff / respondent in possession. By virtue of the same, the execution proceedings in Execution No.1760/2019 also



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attained finality. Therefore, he preferred this appeal by citing the reasons for the delay caused.

7. Learned counsel for the appellants, to substantiate his defence, had relied on the following judgments:-

- i) ***Inder Singh v. The State of Madhya Pradesh¹***
- ii) ***Sheo Raj Singh (Deceased) Through Legal Representatives & Others v. Union of India & Another²***
- iii) ***Bhivchandra Shankar More v. Balu Gangaram More & Others³***

8. *Per contra*, learned counsel for the respondent vehemently opposed in considering the application for condonation of delay by submitting that the suit for partition and separate possession has been decreed and thereafter, FDP proceedings has also attained finality. In the execution proceedings, the said execution petition

¹ 2025 Live Law (SC) 339

² (2023) 10 SCC 531

³ (2019) 6 SCC 387



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has also been closed stating that the claim of the respondent had attained finality and satisfaction. Such being the fact, giving rebirth to the suit by way of continuing the appeal does not satisfy any benefits of the appellant.

9. It is further submitted that the respondent, being a co-sharer, even otherwise is also entitled for the relief of partition. Therefore, condoning the delay by allowing the application would cause irreparable loss and injury.
10. To substantiate his claim, learned counsel for the respondent relied on the judgment of the Hon'ble Supreme Court in the case of ***Pathapati Subba Reddy (Died) by L.Rs. & Ors. v. The Special Deputy Collector (LA)***⁴.
11. Having heard learned counsel for the respective parties and on perusal of the findings of the Trial Court in

⁴ (2024) 12 SCC 336



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granting the decree to the respondent, it is relevant to state the facts of the case in brief.

12. The plaintiff and the defendant No.2 are the children of K. Rajashekharachary and the defendant No.1 is the wife of the said K. Rajashekharachary. They constituted the joint Hindu undivided family after the death of the kartha of the family. The plaintiff had filed a suit for partition and separate possession of the property as stated in the plaint and the same came to be decreed by the Trial Court on 31.01.2014. However, the present appeal came to be filed on 16.01.2021 and the delay in filing the said appeal has not been explained properly.

13. At this stage, it is relevant to refer the ratio laid down by the Hon'ble Supreme Court in the case of **Pathapati Subba Reddy** (referred to *supra*). The Hon'ble Supreme Court, in paragraph No.28 of the judgment, held as under:-



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28. *On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:*

28.1. *Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;*

28.2. *A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;*

28.3. *The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;*

28.4. *In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;*

28.5. *Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of*



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power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

28.6. *Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;*

28.7. *Merits of the case are not required to be considered in condoning the delay; and*

28.8. *Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.*

14. On a careful reading of the dictum of the Hon'ble Supreme Court stated *supra*, it is clear that the Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained. However, that exercise of power is discretionary in nature and may



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be exercised if sufficient cause is established for various factors, such as, negligence and want of due diligence. It is needless to state that merits of the case are not required to be considered in condoning the delay. The delay condonation application has to be decided on the parameters laid down for condoning the delay.

15. On considering the ratio laid down by the Hon'ble Supreme Court and on going through the facts and circumstances of the case, I am of the considered opinion that the reasons assigned by the appellants in the application for condonation of delay are not satisfactory. Therefore, the application for condonation of delay filed by the appellants deserves to be dismissed. Ordered accordingly.
16. In view of the dismissal of the I.A., the main appeal (RFA.No.100/2021) does not survive for consideration. Hence, the appeal stands ***disposed of.***
17. In view of the dismissal of the main appeal, pending I.As., if any, are disposed of.



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18. This appeal has been filed by the appellants, who were the defendants before the Trial Court. The respondent before this Court was the plaintiff before the Trial Court.
19. The respondent is the daughter of the first appellant and sister of the second appellant. The respondent filed a suit for partition and separate possession in respect of the suit schedule property, which is a house property bearing No.544, 2nd main road, 11th cross, MICO Layout, BTM Layout, Bengaluru-76, consisting of two floors, which is stated to be the joint family property.
20. It is contended that the said property was acquired by the father of the appellant No.2 and the respondent under the registered sale deed dated 21.01.1980 and he had constructed a two-storied building on the suit schedule property. The Trial Court decreed the suit and the FDP came to be filed by the respondent. The Trial Court appointed a Court Commissioner and after taking into consideration the report submitted by the Court



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Commissioner, allowed the final decree proceedings. Being aggrieved by the same, the appellants have challenged the same by way of filing this appeal.

21. Heard Sri G.S. Venkat Subbarao, learned counsel for the appellants and Sri K.N. Nitish, learned counsel for the respondent.
22. The submission of the learned counsel for the appellants is that the judgment and decree passed by the Trial Court is erroneous both in law and on facts. Hence, the same is liable to be set aside.
23. It is further submitted that the manner in which division of the property was effected is unknown to the law of partition. Therefore, passing of the final decree has to be set aside.
24. It is further submitted that the Trial Court has committed a procedural irregularity in dividing the property by metes and bounds, thereby frustrating the decree for partition.



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25. It is further submitted that the Trial Court ought to have given the appellants an opportunity to represent the case. Not giving an opportunity to defend the case resulted in passing the impugned order which requires re-appreciation. Hence, the same has to be set aside. Making such submissions, the learned counsel for the appellants prays to allow the appeal.
26. *Per contra*, learned counsel for the respondent vehemently justified the order passed by the Trial Court in F.D.P. No.91/2026. The right of the respondent / plaintiff has been determined by the Trial Court. The property has been divided by metes and bounds in the FDP. In the execution proceedings, the decree of the plaintiff has been satisfied. Such being the fact, interference with the order of the Trial Court in the FDP would not arise. Hence, the appeal has to be dismissed. Making such submissions, learned counsel for the respondent prays to dismiss the appeal.



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27. Having heard learned counsel for the respective parties and on perusal of the findings of the Trial Court, it appears that the plaintiff / respondent is entitled for 1/3rd share as per the order of the Trial Court in the suit for partition and separate possession. The scheduled premises consists of three floors i.e., ground, first and second floors. In the ground floor, there are three bedrooms with a hall, kitchen and two bathrooms. This portion has been let out by the respondent herein, which is also not in dispute.
28. The report of the Court Commissioner would indicate the portions of A, B and C. The apportionment of the property has been carried out in accordance with the Court Commissioner's sketch, without any hindrance. Learned counsel for the respondent submitted that in the Execution Proceedings, the decree in favour of the respondent has been satisfied.
29. In view of the said submission and also on going through the findings of the Trial Court in the final decree



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proceedings, there is no occasion for this Court to interfere with the said findings.

30. Accordingly, I proceed to pass the following:-

ORDER

- i) The appeal – RFA.No.236/2021 stands ***dismissed*** without any costs.
- ii) The Registry is directed to draw the decree accordingly.

In view of dismissal of the appeal, pending I.As., if any, stand disposed of.

**Sd/-
(S RACHAIAH)
JUDGE**

BSS
List No.: 1 Sl No.: 25