



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 1475 OF 2021 (PAR)

BETWEEN:

SRI. KEMPARAJU
S/O. LATE B.K. LINGARAJAIAH,
AGED ABOUT 53 YEARS,
R/AT BALAGUNASE VILLAGE,
PALAYA HOBLI, KOLLEGALA TALUK,
CHAMARAJANAGARA DISTRICT-571313.

...APPELLANT

(BY SRI. MANJUNATH N.D., ADVOCATE)

AND:

1. SMT. CHAMUNDAMMA
W/O. LATE KEMPANAYAKA,
AGED ABOUT 70 YEARS,
2. SMT. MAHADEVAMMA
W/O. LATE NANJUNDANAYAKA,
AGED ABOUT 40 YEARS,
3. SHANTI. D
D/O. LATE NANJUNDANAYAKA,
AGED ABOUT 30 YEARS,
4. SRI. SIDDARAJU
S/O. LATE NANJUNDANAYAKA,
AGED ABOUT 27 YEARS,
5. SRI. KEMPARAJU
S/O. LATE NANJUNDANAYAKA,

Digitally
signed by
VINUTHA B
S
Location:
High Court
of Karnataka





AGED ABOUT 26 YEARS,

ALL ARE RESPONDENTS 1 TO 5
ARE R/AT BHARATI NAGARA,
K.M. DODDI, MADDURU TALUK,
MANDYA DISTRICT - 571 428.

6. SRI. KEMPARAJU
S/O. LATE CHIKKA NINGA NAYAKA,
AGED ABOUT 40 YEARS,
R/AT BHARATHI NAGARA,
K.M. DODDI, MADDURU TALUK,
MANDYA DISTRICT - 571 428.
7. SRI. KANAPPA
S/O. CHIKKA NINGA NAYAKA,
AGED ABOUT 38 YEARS,
R/AT CHIKKALURU VILLAGE,
THEILANUR POST, KOLLEGALA
TALUK, CHAMARAJANAGARA
DISTRICT - 571 440.
8. SMT. JAYAMMA
W/O. LATE SUMMIRAJU,
AGED ABOUT MAJOR,
9. KUM. ASHWINI
D/O. LATE SUMMIRAJU,
AGED ABOUT 21 YEARS,
10. SRI. SANTHOSH
S/O. LATE SUMMIRAJU,
AGED ABOUT 19 YEARS,
11. SMT. DODAMMA
D/O. LATE CHIKKANINGANAYAKA,
AGED ABOUT 33 YEARS,
12. SMT. PRAMILA
D/O. LATE CHIKKANINGANAYAKA,



AGED ABOUT 29 YEARS,

ALL ARE RESPONDENTS 8 TO 12
ARE R/AT BALAGUNASE VILLAGE,
THEILANUR POST, PALYA HOBLI,
KOLLEGALA TALUK, CHAMARAJANAGAR
DISTRICT - 571 440.

...RESPONDENTS

THIS RSA IS FILED UNDER SECTION 100 OF CPC
AGAINST THE ORDER DATED 16.03.2020 PASSED IN
RA.NO.21/2017 ON THE FILE OF THE SENIOR CIVIL JUDGE
AND JMC, KOLLEGAL, DISMISSING THE APPEAL AND FILED
AGAINST THE JUDGMENT AND DECREE DATED 03.07.2013
PASSED IN OS NO.47/12 ON THE FILE OF THE ADDITIONAL
CIVIL JUDGE AND JMFC, KOLLEGALA.

THIS RSA, COMING ON FOR ADMISSION, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

Heard Sri. Manjunath N.D., learned counsel for the
appellant through video conferencing. This Court did not
deem fit to issue notice to the respondent.

2. Defendants in O.S.No.47/2012 are the
appellant in the second appeal challenging the decree
passed in the said suit granting one fifth share to the



plaintiffs in the following property [hereinafter referred to as 'the suit property]:

"ಷೆಡ್ಯೂಲ್ ಸ್ಥತ್ತಿನ ವಿವರ :-

ಚಾಮರಾಜನಗರ ಜಿಲ್ಲೆ, ಕೊಳ್ಳೇಗಾಲ ತಾಲ್ಲೂಕು, ಪಾಳ್ಯ ಹೋಬಳಿ, ತೆಳ್ಳನೂರು ಗ್ರಾಮದಲ್ಲಿ ಬರುವ ಸರ್ವೆ ನಂಬರ್ 470 ವಿಸ್ತೀರ್ಣ ಒಟ್ಟು 7.93 ಎಕರೆ ಜಮೀನು ಈ ಪೈಕಿ 3-83 ಎಕರೆ ಇದರಲ್ಲಿ ಮೂರನೇ ಒಂದು ಭಾಗ ಅಂದರೆ 1-27½ ಎಕ್ರೆ ಖುಷ್ಕಿ ಭೂಮಿ ಇದಕ್ಕೆ ಚೆಕ್ಕು ಬಂದಿ.

ಪೂರ್ವಕ್ಕೆ : ಓಣಿ ಮತ್ತು ಮುತ್ತನಾಯಕನ ಭೂಮಿ

ಪಶ್ಚಿಮಕ್ಕೆ: ಕೃಷ್ಣಶೆಟ್ಟಿ ಭೂಮಿ

ಉತ್ತರಕ್ಕೆ : ಚಿಕ್ಕಲಿಂಗನಾಯಕನ ಭೂಮಿ

ದಕ್ಷಿಣಕ್ಕೆ : ವೆಂಕಟಮ್ಮನ ಭೂಮಿ"

2.1 Pursuant to the decree passed in O.S. No.47/2012, plaintiffs filed F.D.P No.7/2014, which also ended as per the preliminary decree. A belated appeal came to be filed by the defendants in R.A. No.21/2017. There was a delay of four years two months in filing such appeal.

2.2 Therefore, the respondents-plaintiffs contested the application seeking condonation of huge delay of four years two months. An enquiry was held by the First



Appellate Court on the application seeking condonation of delay. Defendants placed necessary evidence on record with documents with regard to the condonation of delay.

2.3 Learned Judge in the First Appellate Court upon considering the relevant aspects of the matter, following the dictum of the Hon'ble Apex Court in various judicial pronouncements, dismissed the application filed by the appellant herein *inter alia* holding in paragraph Nos.11 and 12 as under:

11. The Hon'ble Supreme Court of India and various Hon'ble High Courts have time and again issued guidelines to be followed while considering an application filed seeking to condone delay in filing the appeal. The law laid down in this regard may be summarized as under:

The length of the delay does not gain importance while adjudicating an application for condoning the delay. If the explanation assigned for condoning the delay is reasonable or sufficient reason is shown a delay of long period may be condoned. If sufficient reasons are not shown a delay of short period may not be condoned. The expression "sufficient reason" depends on the facts and circumstances of the case. There can be no straight jacket formula for condoning the delay. A litigant does not stand to gain by filing an appeal/ application belatedly. Refusing to condone delay can result in a



meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so. Even if the term 'sufficient cause' has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the concerned party. The purpose of introducing liberal construction normally is to introduce the concept of 'reasonableness' as it is understood in its general connotation. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right, as accrued in favour of one party as a result of the failure of the other party as a result



of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away the right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.

12. The appellant has not taken the plea of ill-health of his brother and sister-in-law in his application. He has not stated where he was working all these years. He has not denied that he was served with suit summons in OS No.47/2012. The certified copy of impugned judgment and decree show that the appellant has applied for certified copy on 03.06.2015. He has obtain the certified copy on 07.07.2015. He has filed the present appeal on 20.09.2017. He has filed the present appeal after the expiry of more than 4 years 2 months from the date of decree and more than 2 years 2 months from the date of obtaining certified copy. The respondent No.1 to 5 have already taken possession of the property allotted to them in FDP No.7/2014. The appellant was aware that the Taluka Surveyor has survey the land and demarcated the share of respondent No.1. To 5 in suit schedule property. All these years the appellant kept quite. He has know filed the appeal with a view to harass the respondent No.1 to 5. A close scrutiny of affidavit filed by the appellant show that he has not assigned proper and convincing reasons to condone the delay in filing the appeal. The appellant is contending that he was away from his village to eke out his livelihood. However, he has furnished medical documents of his sister-in-law Smt. Basamma though he has not taken a plea that he was looking after her and as such the delay is caused. If the delay is condoned it will cause great hardship to the



respondents No.1 to 5 and they will be made to suffer for no fault. The materials available on record show that though the appellant is well conversant with the Court proceedings he has not exercised due diligence in filing the appeal. Therefore no prejudice would be caused to the appellant, if IA No.1 is the dismissed. In such circumstances, I am of the opinion that the appellant has failed to make out a good case so as to allow IA No.1. Accordingly, I answer point No.1 in the Negative.

Consequently, the appeal was also dismissed.

3. Being further aggrieved by the same, defendant has filed the present appeal on the following grounds and substantial question of law:

"GROUNDS

- *That, the impugned order of the First Appellate Court is neither maintainable in law nor sustainable upon the facts and circumstances of the case, and the same deserves to be set-aside.*
- *That the First Appellate Court ought to have allowed the application and accepted the appeal for hearing on merits as the Appellant in his appeal had made severe allegations against the Respondent Nos. 1 to 5 for playing fraud upon the trial court by misleading the court obtaining the decree in their favour. Since the Appellant alleges that the Respondent Nos.) to 5 have deliberately and with an intention to knock off the property filed the suit by making dubious claims which were not substantiated by them during the trial.*



- *That the trial court did not seek for the mother document pertaining to the lands in Sy.No.470/2 to ascertain the owner of the said lands and if at all the suit schedule property was a joint family property which was available for partition. The trial court entirely relied upon the RTC and other revenue documents to identify the rights of the Respondent Nos. 1 to 5 while ordering for partition which is improper and non-application of mind on the part of the trial judge.*
- *There are serious infirmities in the original suit filed by the Respondent Nos.1 to 5. Only the Appellant and one B.K Chikkaninganayaka were arrayed as Defendants without stating if they are the only legal heirs or rightful shareholders in respect of the suit schedule property. The Appellant's brother one Shri. Lingaraja Nayaka along with the Appellant were the only sole surviving legal heirs of their father who purchased the lands measuring 2 Acres 64 cents of land in Sy.No.470 in the year 1971 by way of a registered sale deed. The said lands purchased by the Appellant's father were part of larger lands measuring almost 8 acres in Sy.No.470. In the suit schedule the extent of the lands shown was 3 acres 83 cents of land in Sy.No.470/2. Though the Respondent Nos.1 to 5 had produced the RTC's for the year 2012, the said RTC reveals the names of the Appellant and his brother Lingaraja Nayaka S/o B.K.Lingarajaiah along with another person's name Chikkaninganayaka S/o.Kempanayaka. Even on a perusal of the RTC produced by the Respondent Nos. 1 to 5, it could be seen that the said lands in Sy.No.470/2 were inherited by the Appellant Kemparaju and his brother Lingaraja Nayaka in the year 2001-02 itself with each taking 1 acres 32 cents out of the 2*



acres 64 cents of lands in their father Late B.K.Lingarajaiah's name purchased by him in the year 1971 with Katha Nos.612. Whereas the name of Late Chikkaninganayka S/o Kempanayaka is also shown to an extent of 1 acres 18 cents which he has inherited in the year 1994-95 itself with katha No.613.

- *Even though the Appellant did not contest the partition suit and was placed ex-parte, the trial court i.e., Additional Civil Judge and JMFC, Kollegala was bound to examine the nature of the property, the relationship of the parties to the claim with regard to the property sought for partition*

SUBSTANTIAL QUESTION OF LAW:

- (i) *Whether the First Appellate Court was justified in rejecting the application under section 5 of the Limitation Act for condonation of delay of 2310 days in preferring the first appeal on the ground that proper reasons have not been stated for condonation of delay?"*

4. Sri. Manjunath N.D., learned counsel for the appellant reiterating the grounds urged in the appeal memorandum would contend that the approach of the First Appellate Court dismissing the appeal filed by the defendant and by refusing to condone the delay in filing the appeal on the ground that the final decree proceedings have already been instituted has resulted in grave



miscarriage of justice and sought for admitting the appeal on the aforesaid substantial question of law.

4.1. Sri. Manjunath N.D., learned counsel for the appellant would also contend that learned Judge in the First Appellate Court failed to note the powers vested in it under Section 96 of CPC to revisit into the factual aspects of the matter especially when the judgment of the trial Court was passed *ex parte*.

4.2 He also emphasized that reasoning assigned by the First Appellate Court in not condoning the delay in filing the appeal, cannot be accepted with the settled principles of law especially, when rights of immovable properties were to be adjudicated in a given case and thus, sought for admitting the appeal.

5. This Court, having heard the arguments of the counsel for appellant, has perused the material on record meticulously.



6. On such perusal of the material on record, suit in O.S. No.47/2012 got decreed *ex parte* on 03.06.2015. In other words, three years have elapsed in getting the suit decreed before the trial Court and there was sufficient time for the defendant to approach the very trial Court itself setting aside *ex parte*.

6.1 But the defendant for the reasons best known to him, did not choose to get the *ex parte* order set aside, but allowed the suit to be decreed *ex parte*.

6.2 Thereafter, defendant did not choose to file the appeal in time though he obtained certified copy belatedly. Even after obtaining the certified copy, there is a delay of two years two months in filing the appeal.

6.3 Therefore, First Appellate Court noted that the defendant was only interested in watching the proceedings outside the Court and only after the institution of the final decree proceedings and got concluded, filed the belated



appeal with an application seeking condonation of delay of four years two months.

7. Pertinently, the enquiry that has been held would go to show that the defendant was hale and healthy and it is his sister-in-law Smt. Basamma who was not well. If his sister-in-law was not well what prevented him to approach the Court within reasonable time and appeal against the judgment of the trial Court is a question that remains unanswered.

7.1 Therefore, the learned Judge in the First Appellate Court was justified in not condoning the huge delay of four years two months in filing the appeal.

8. Thus, this Court does not find any merits in any one of the substantial questions of law raised in the appeal for further consideration. More so having regard to the fact that the list got concluded by passing the final decree.

9. Hence, the following:



**NC: 2026:KHC:36039
RSA No. 1475 of 2021**

ORDER

- (i) Admission declined.
- (ii) Regular Second Appeal is dismissed.

**Sd/-
(V SRISHANANDA)
JUDGE**

VBS
List No.: 1 Sl No.: 68