



CNR: KAHC010209562014

NC: 2026:KHC:44083
RSA No. 968 of 2014

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S.KINAGI

REGULAR SECOND APPEAL NO. 968 OF 2014 (DEC)

BETWEEN:

S.DEVAPRASAD
SON OF K SIDDIAIAH
AGED ABOUT 64 YEARS
1734/A, CHRISTIAN COLONY
MANDYA CITY – 571 401

...APPELLANT

(BY SRI. Y K SHESHAGIRI RAO., ADVOCATE FOR
SMT. MEENAKSHI K D, ADVOCATE)

AND:

Digitally signed
by KIRAN
KUMAR R.
Location: High
Court of
Karnataka

1. C. PUSHPARAJU
SINCE DEAD BY LRS
- 1(A) SMT. SHUBHASHINI
D/O LATE C PUSHPARAJU
AGED ABOUT 63 YEARS
RESIDING AT CHRISTIAN COLONY
MANDYA CITY – 571 401
- 1(B) P NITHISH RAJ
S/O LATE C PUSHPARAJU
AGED ABOUT 34 YEARS
RESIDING AT CHRISTIAN COLONY
MANDYA CITY – 571 401



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2. YESHU VANAJA
SON OF LATE CHANDRAKARAPPA
AGED ABOUT 62 YEARS
D-3/343, CHRISTIAN COLONY
MANDYA CITY – 571 401
3. C GRACE PUSHPA KUMARI
SINCE DEAD BY HER LEGAL REPRESENTATIVES

3(A) MANUAL SATHYADAS
AGED ABOUT 60 YEARS
HUSBAND OF LATE C GRACE PUSHPA KUMARI

3(B) ALEX EMMENUAL
AGED ABOUT 25 YEARS
S/O LATE C GRACE PUSHPA KUMARI

BOTH ARE R/AT #25, CH-S, 4TH MAIN,
3RD CROSS, JAYANAGAR
MYSURU – 570001
4. A VIJAYAKUMAR
SON OF ALBERT
AGED ABOUT 74 YEARS
1700, 6TH CROSS
K R ROAD, SUBHASH NAGARA
MANDYA CITY – 571 401
5. VINUTHA KUMARI
WIFE OF EARNEST KUMAR
AGED ABOUT 42 YEARS
MAHADEVAPURA EXTENSION
NACHANAHALLI PALYA
MANANDAVADI ROAD
MYSORE CITY – 570 001
6. LURDHU MARY VIJAY
DAUGHTER OF A VIJAYA KUMAR
AGED ABOUT 39 YEARS
1700, 6TH CROSS, K R ROAD



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SUBHASH NAGARA
MANDYA CITY – 571 401

7. SUSHMA VATSALA
WIFE OF SATHISH KUMAR
AGED ABOUT 37 YEARS
3RD CROSS, ASHOK NAGARA
SHIMOGA
SHIMOGA DISTRICT – 577 201

...RESPONDENTS

(BY SRI. B K MOHAN, ADVOCATE FOR R1(A & B), R2, R3(A&B)
AND R5 TO R7
V/O DATED 22.02.2019 APPEAL AGAINST R4 IS DISMISSED AS
ABATED)

THIS RSA IS FILED U/Sec.100 OF CPC., AGAINST THE
JUDGMENT & DECREE DTD 14.01.2011 PASSED IN
R.A.NO.282/2010 ON THE FILE OF THE PRL. DISTRICT AND
SESSIONS JUDGE, MANDYA, DISMISSING THE APPEAL
CONFIRMING THE JUDGMENT AND DECREE DTD 22.06.2009
PASSED IN O.S.NO.177/2007 THE FILE OF THE PRL. CIVIL
JUDGE, (SR. DN.) AND CJM, MANDYA.

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

CORAM: HON'BLE MR. JUSTICE ASHOK S.KINAGI



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ORAL JUDGMENT

1. This Regular Second Appeal is filed by the appellants, challenging the Order dated 14.01.2011 passed on I.A. No.1, consequently, dismissing the appeal as barred by limitation in Regular Appeal No.282 of 2010 passed by the learned Principal District and Sessions Judge, Mandya (for short, '***the First Appellate Court***'), thereby confirming the judgment and decree dated 22.06.2009 passed in O.S. No.177 of 2007 by the learned Principal Civil Judge (Sr.Dn.) and CJM, Mandya (for short, '***the Trial Court***').
2. For the sake of convenience, the parties are referred to, based on their ranking before the Trial Court. The appellant was the defendant and the respondents were the plaintiffs.
3. The plaintiffs filed a suit for declaration, possession and mesne profits. It is the case of the plaintiffs that the plaint schedule property, which is a residential



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house measuring 40x55 sq.ft., is the ancestral property of the father of plaintiff Nos.1 to 3 and after the demise of their father, plaintiff No.3 and their mother have filed a suit against the plaintiff for partition and separate possession in Original Suit No.146 of 1994. The said suit was decreed by allotting 1/4th share in the suit schedule property.

4. Initially, plaintiff No.2 was managing the affairs of the family. On 11.06.1994, plaintiff No.2 borrowed a loan of ₹50,000/- from the defendant by mortgaging the plaint schedule property. As per the contract, he was permitted to stay in the house till the repayment of entire loan amount of ₹50,000/-. The defendant misused the document and filed a suit in OS No.271 of 1997 for the relief of specific performance of contract. The said suit came to be dismissed. It is contended that the plaintiffs are ready to pay the borrowed loan amount of ₹50,000/- to the defendant and they have deposited the amount in Canara Bank,



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Mysore Branch. It is contended that the defendant has no right, title or interest over the suit schedule property. The plaintiffs have issued a notice to the defendant to receive the loan amount and to vacate the suit schedule premises. Despite service of notice, defendant has not received the loan amount and delivered the possession of the suit schedule property. Hence, a cause of action arose for the plaintiffs to file a suit for declaration, possession and mesne profits.

5. The defendant filed a written statement denying the averments made in the plaint and admitted that the plaintiffs have filed a suit in O.S. No.146 of 1994 by colluding with each other, without impleading the defendant in the said suit. Hence, the judgment and decree passed in O.S. No.146 of 1994 is not binding on the defendant. It is contended that plaintiff No.2 is the absolute owner of the suit schedule property and plaintiff No.2 has delivered the possession of the



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suit schedule property to the defendant by executing a sale agreement in favour of the defendant. It is contended that the defendant has made substantial development in the suit schedule property. Hence, prays to dismiss the suit.

6. The trial Court, based on the rival pleadings of the parties, framed the following issues:

- (i) "Does the Plaintiffs prove that they are absolute owners of the suit schedule property as contended in the plaint?
- (ii) Does the Plaintiffs prove that they are entitled for recovery of suit schedule property from the Defendant by paying Rs.50,000/- as ordered in OS No.271/1997 by the court of Civil Judge (Sr.Dn) Mandya?
- (iii) Does Plaintiffs prove that they are entitled for mesne profits?
- (iv) Does the Defendant prove that he has improved the suit schedule property



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by investing huge amount, so he is entitled to recover that amount from the Plaintiffs as contended in para No.3 of written statement?

(v) What order or decree?"

7. The plaintiffs to substantiate their case, examined plaintiff Nos.1 and 2 as PW1 and PW2; marked 6 documents as Exhibits P1 to P6. In rebuttal, defendant, despite granting sufficient opportunity, did not enter the witness box and the evidence of defendant was taken as nil.
8. The Trial Court, after recording the evidence of the plaintiffs, hearing both sides and assessing the verbal and documentary evidence on record, answered issue Nos.1 and 2 in affirmative; issue Nos.3 and 4 in negative; and issue No.5 as per the final order. The suit was decreed partly with costs. The suit of the plaintiffs for mesne profits was dismissed without costs.



9. The suit of the plaintiffs for declaration and possession with respect to the suit schedule property is decreed with costs and it is declared that the plaintiffs are the absolute owners of the suit schedule property and are entitled to recover the possession of the suit schedule property from the defendant and further, three months time was granted to the defendant to deliver the vacant possession of the suit schedule property to the plaintiffs, failing which the plaintiffs are held entitled to recover the possession from the defendant through court, vide judgment dated 22.06.2009.
10. The defendant, aggrieved by the judgment and decree dated 22.06.2009 passed in O.S. No.177 of 2007, preferred an appeal in Regular Appeal No.282 of 2010, wherein the defendant has filed an application in I.A. No. 1 for condonation of delay of 11 months 4 days in preferring the appeal. The



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defendant, despite granting sufficient opportunity, did not appear before the First Appellate Court.

11. The First Appellate Court, vide Order dated 18.09.2010, posted the appeal for enquiry on I.A. No.1. Thereafter, the appeal was adjourned to various dates and ultimately posted on 14.01.2011. On 14.01.2011, as none appeared for the appellant, the First Appellate Court taken the enquiry as nil and I.A. No.1 was dismissed. Consequently, the appeal was dismissed as barred by limitation.
12. The defendant, aggrieved by the Order dated 14.01.2011, filed this appeal.
13. Heard the arguments of the learned counsel for the defendant.
14. Learned counsel for the defendant submits that the plaintiffs have agreed to sell the suit schedule property and accordingly, they have executed a sale



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agreement and contended that the defendant has made substantial developments to the suit schedule property by spending huge amounts. He submits that the First Appellate Court committed an error in passing the impugned order and judgment and he submits that the Trial Court has not given sufficient opportunity to the defendant to lead evidence. Hence, on these grounds, he prays to allow the appeal.

15. This Court, vide order dated 06.10.2023, admitted the appeal to consider the following substantial question of law:

"Whether the First Appellate Court is justified in law in dismissing IA No.1 which is filed for condonation of delay in filing the appeal, and consequently, dismissing the Regular First Appeal without following the mandatory legal requirements of law under the



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***provisions of Order XLI, Rule 31 of
Code of Civil Procedure?"***

Reg. Substantial Question of law:

16. The plaintiffs filed a suit for declaration, possession and mesne profits on the ground that the plaintiffs have borrowed a sum of Rs.50,000/- from the defendant and executed a mortgage deed and the possession was delivered to the defendant. It is agreed that the possession to be handed over to the plaintiffs after refund of the entire loan amount. It is contended that the plaintiffs have got issued a legal notice calling upon the defendant to receive the mortgage amount and to deliver the possession. Meanwhile, the defendant filed a suit in OS No.271 of 1997 alleging that the plaintiffs have agreed to sell the suit schedule property. The said suit came to be dismissed and the plaintiffs have deposited the loan amount in Canara Bank, Mysore branch. The defendant has no right to continue in possession of



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the suit schedule property. The plaintiffs have got issued a legal notice calling upon the defendant to receive the loan amount and deliver the possession of the suit schedule property. Despite service of notice, the defendant did not receive the loan amount and delivered the possession of the suit schedule property to the plaintiffs.

17. The plaintiffs, to establish their case, plaintiff No.2 was examined as PW1 and he reiterated the plaint averments in the examination-in-chief and produced the documents:

- Exhibit P1 is a certified copy of the judgment passed in OS No.146 of 1994, wherein the family Members of the plaintiffs filed a suit for partition and separate possession. The said suit was decreed and 1/2 share was allotted in favour of the plaintiffs;
- Exhibit P2 is the certified copy of the judgment passed in OS No.271 of 1997,



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which discloses that the defendant filed a suit for specific performance of a contract against the plaintiffs, alleging that the plaintiffs have agreed to sell the suit schedule property. The said suit came to be dismissed;

- Exhibit P3 is a certified copy of the decree passed in OS No.271 of 1997;
- Exhibit P4 is the office copy of the legal notice issued by the plaintiffs to the defendant calling upon the defendant to receive the loan amount and deliver the possession of the suit schedule property;
- Exhibit P5 is the postal acknowledgment which clearly discloses that Exhibit P4 notice was served on the defendant. The defendant did not reply to Exhibit P4;
- Exhibit P6 is the fixed deposit receipt which discloses that plaintiffs have deposited the loan amount of Rs.50,000/- in the fixed deposit at Canara Bank.



18. The plaintiff also examined one more witness as PW2, who has deposed that there was a partition in the family and the properties were divided and the suit schedule property fell to the share of the plaintiffs.
19. In rebuttal, the defendant has not entered the witness box.
20. The Trial Court, based on the pleadings and the evidence, recorded a finding that the plaintiffs proved that they are the owners of the suit schedule property and they are entitled for recovery of the suit schedule property from the defendant by paying Rs.50,000/-, as ordered in OS No.271 of 1997 by the Court of Principal Civil Judge (Senior Division), Mandya, and held that if the plaintiffs fail to prove that they are entitled to mesne profits and further, held that the defendant has failed to prove that he has made improvements in the suit schedule



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property by investing huge amount. Hence, he is entitled to recover the loan amount from the plaintiffs, as contended in paragraph No.3 of the written statement. Consequently, the Trial Court partly decreed the suit of the plaintiff, declaring that the plaintiffs are the absolute owners of the suit schedule property and directed the defendant to deliver the vacant possession of the suit schedule property to the plaintiffs.

21. The Trial Court passed the judgment on 22.06.2009. However, the defendant did not file the appeal before the First Appellate Court immediately. The defendant filed an appeal in RA No.282 of 2010 after a lapse of 11 months 4 days from the date of passing of the judgment and filed IA No.1 under Section 5 of the Limitation Act for condoning the delay of 11 months 4 days in preferring the appeal.



22. The First Appellate Court posted the matter for enquiry on IA No.1. Despite granting sufficient opportunity, the defendant remained absent before the First Appellate Court. The First Appellate Court, vide Order dated 04.01.2011, taken the inquiry as nil on IA No.1 and hence, dismissed the application IA No.1 and consequently, dismissed the appeal as barred by limitation.
23. The defendant aggrieved by the order on IA No.1 and the judgment dismissing the appeal in RA No.282 of 2010 filed this regular second appeal, after a lapse of 1,199 days delay in filing this appeal.
24. From the perusal of the entire records, it is clear that since from the beginning, the defendant was not diligent in conducting the proceedings, as the defendant has failed to enter the witness box before the Trial Court; filed the appeal after 11 months 4 days delay from the date of passing of the judgment



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and decree by the Trial Court; and also the defendant did not appear before the First Appellate Court for leading evidence on I.A. No.1 filed under Section 5 of the Limitation Act. The First Appellate Court taken the enquiry on I.A. No.1 as nil and rejected I.A. No.1 and consequently, dismissed the appeal. There is a delay of 1,199 days in filing this regular second appeal as well.

25. The Hon'ble Apex Court in the case of ***Chennai Metropolitan Water Supply and Sewerage Board and others versus T.T. Murali Babu***¹, has held in paragraph No.16 as follows:

"16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable

¹ (2014) 4 Supreme Court Cases 108



jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the *lis* at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant — a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the *lis*.”

26. From a bare reading of paragraph No.16, the Apex Court has held that the doctrine of delay and laches



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should not be lightly brushed aside and also further held that belated approach gains more significance, as the respondent being absolutely careless to his duty and lackadaisical attitude to the responsibility, had remained unauthorisedly absent and further held that the court is not expected to give indulgence to such indolent persons—who compete with “*Kumbhakarna*” or for that matter “*Rip Vank Winkle*”.

27. The Apex Court in the case of ***Shivamma (dead) by LRS v. Karnataka Housing Board***², held in paragraph 261 as follows:

“**261.** Thus, for the reasons aforesaid, the impugned order of the High Court deserves to be set aside. Before we proceed to close this judgment, we deem it appropriate to make it abundantly clear that administrative lethargy and laxity can never stand as a sufficient ground for condonation of

² 2025 SCC OnLine 1969



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delay, and **we want to convey an emphatic message to all the High Courts that delays shall not be condoned on frivolous and superficial grounds, until a proper case of sufficient cause is made out**, wherein the State-machinery is able to establish that it acted with *bona fides* and remained vigilant all throughout. Procedure is a handmaid to justice, as is famously said. But courts, and more particularly the constitutional courts, ought not to obviate the procedure for a litigating State agency, who also equally suffer the bars of limitation from pursuing litigations due to its own lackadaisical attitude."

(emphasis supplied)

28. Further, the Hon'ble Apex Court in the case of ***Lingeswaran v. Thirunagalingam***³ has declined to

³ 2022 SCC OnLine SC 2233



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condone the delay of 467 days in preferring the appeal.

29. Hence, the First Appellate Court was justified in passing the impugned order and judgment, and rightly dismissed the appeal.

30. As the First Appellate Court has dismissed the appeal on the ground that the appeal filed by the defendant is barred by limitation, the question of following the mandatory legal requirements of law under the provisions of Order XLI Rule, 31 of the Code of Civil Procedure, 1908 does not arise.

31. In view of the above discussion, I answer the substantial question of law in the ***affirmative***.

32. In the result, I proceed to pass the following order:

ORDER

(I) The Regular Second Appeal is
dismissed.



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(II) The impugned order/judgment and decree passed by the Courts below are confirmed.

(III) In view of the dismissal of the appeal, pending interlocutory applications, if any, do not survive for consideration and are accordingly disposed of.

**Sd/-
(ASHOK S.KINAGI)
JUDGE**

RK
List No.: 2 Sl No.: 5