



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

MISCELLANEOUS SECOND APPEAL NO. 56 OF 2021 (RO)

BETWEEN:

1. SANJEEVI B HEGDE
AGED ABOUT 90 YEARS,
W/O LATE BALAKRISHNA HEGDE,
2. DR. M.SUNIL HEGDE
AGED ABOUT 67 YEARS,
S/O LATE BALAKRISHNA HEGDE,
3. SHAMBHAVI C HEGDE
AGED ABOUT 78 YEARS,
W/O LATE CHITHARANJANADAS HEGDE,
4. ANJU HEGDE
AGED 53 YEARS,
D/O LATE CHITHARANJANADAS HEGDE
5. GOVARDHANDAS HEGDE
S/O LATE PADMAVATHI HEGDE,
SINCE DECEASED BY HIS LRS,
 - A) JNANAVANI G HEGDE,
AGED ABOUT 67 YEARS,
W/O LATE GOVERDHANDAS HEGDE,
 - B) SHREESHAVARDHANA HEGDE
AGED ABOUT 42 YEARS,
S/O LATE GOVARDHANDAS HEGDE
6. NALINI T HEGDE
AGED ABOUT 72 YEARS,
D/O LATE PADMAVATHI HEGDE,

Digitally signed by
PRAMILA G V

Location: HIGH COURT
OF KARNATAKA



7. SOUDHAMINI S SHETTY
AGED ABOUT 80 YEARS,
S/O LATE PADMAVATHI HEGDE,
8. M.NAGAVENI K.RAI
AGED ABOUT 78 YEARS,
D/O LATE PADMAVATHI HEGDE,
9. NAYANATHARA C SHETTY (DECEASED)
A) CHITHRANJAN SHETTY
AGE MAJOR
H/O NAYANTHARA C HEGDE,
10. VASANTHI D HEGDE
AGED ABOUT 70 YEARS,
W/O LATE DHARMAPALA HEGDE,
11. KISHAN HEGDE
AGED ABOUT 59 YEARS,
S/O LATE CHITHARANJANDAS HEGDE,
12. RASHMI SHETTY
AGED ABOUT 44 YEARS,
W/O LATE DHARMAPALA HEGDE,

ALL ARE R/AT MEMBETTU HOUSE,
BOMMARABETTU VILLAGE,
HIRIYADKA POST,UDUPI TALUK AND DISTRICT
PIN-576 113.

...APPELLANTS

(BY SRI.MANU KULKARNI, ADVOCATE
V.C.O DATED 19.08.2024, APPEAL SO FAR AS A(7)
STANDS ABATED)

AND:

1. THE STATE OF KARNATAKA
REP BY ITS DEPUTY COMMISSIONER,
UDUPI DISTRICT, RAJATHADRI,MANIPAL, UDUPI.
2. TAHSILDAR,



UDUPI TALUK OFFICE,UDUPI TALUK AND DISTRICT.

3. ANIL HEGDE
AGED ABOUT 57 YEARS,
S/O LATE CHITHARANJANDAS HEGDE,
R/O SRINIDHI, 110, B BLOCK,
SOBHA MELACHITE,
NEAR JAKKUR FLYING CLUB, BANGALORE.
4. VIDYA SHETTY
AGED ABOUT 65 YEARS,
D/O LATE SHEELAVATHI S HEGDE,
R/O 158/D, 3RD BLOCK, 3RD STAGE,
WEST OF CHORD ROAD,BASAVESHWARA NAGAR,
BANGALORE.
5. AISHA SHETTY
AGED ABOUT 63 YEARS,
D/O LATE SHEELAVATHI S HEGDE,
R/O C/O P PRABHAKAR SHETTY,
MAHALAKSHMI COFFEE PLANTES,
CHIKKAMAGALURU-577 101.
6. GIRISH HEGDE
AGED ABOUT 60 YEARS,
S/O LATE SHEELAVATHI S HEGDE,
"GURUKRIPA", BEJAI CHURCH CROSS-4,
MANGALORE.
7. SMT.PREMALATHA K.SHETTY
AGED ABOUT 89 YEARS,
W/O A K.SHETTY
R/O HOUSE NO.24, N R LAYOUT,
MURUGESH PALYA,BANGALORE-560 001.
8. M.THIMMAPPA HEGDE
AGED ABOUT 75 YEARS,
S/O LATE PADMAVATHI HEGDE,
R/O MAMBETTU HOUSE, HIRIADKA POST,
UDUPI TALUK.
9. SMT.SHAKUNTHALA HEGDE,



AGED ABOUT 74 YEARS,
D/O LATE PADMAVATHI HEGDE
R/O C/O M VISHWANATH MANAI,
H.NO.220, 9TH H MAIN,
HRBR BDA LAYOUT, KALYAN NAGAR,
BANASAVADI, BANGALORE.

PREVIOUSLY RESPONDENT NOS.3 TO 9 ARE
R/AT MEMBETTU HOUSE,
BOMMARABETTU VILLAGE,HIRIYADKA POST,
UDUPI TALUK AND DISTRICT.

...RESPONDENTS

(BY SRI.M RAJAKUMAR., AGA FOR R1 & R2;
V.C.O DATED 07/10/21, NOTICE TO R3 TO R9 IS
DISPENSED WITH;
SRI. AJITH ANAND SHETTY., ADVOCATE FOR R4 TO R9
(VK RETURNED WITH OFFICE OBJECTIONS)

THIS MSA FILED UNDER ORDER XLIII RULE 1(U) OF CPC,
AGAINST THE JUDGMENT AND DECREE DATED 10.08.2021
PASSED IN RA.NO.15/2020 ON THE FILE OF THE PRINCIPAL
DISTRICT JUDGE, UDUPI, ALLOWING THE APPEAL AND
SETTING ASIDE THE JUDGMENT AND DECREE DATED
28.09.2004 PASSED IN O.S.NO.111/2002 ON THE FILE OF THE
PRINCIPAL CIVIL JUDGE (SR.DN) AND CJM, UDUPI,
DECREEING THE SUIT AND REMAND THE MATTER BACK TO
THE TRIAL COURT WITH A DIRECTION TO DECIDE THE SAME
AFRESH BY PROVISION SUITABLE OPPORTUNITIES TO THE
BOTH PARTIES.

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

CORAM: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE



ORAL JUDGMENT

Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondents.

2. This Miscellaneous Second Appeal is filed against the judgment dated 10.08.2021 and decree dated 18.08.2021 in R.A.No.15/2020 remanding the matter to the Trial Court for fresh consideration after affording opportunity to the defendants/respondents No.1 and 2.

3. Learned counsel appearing for the appellants would submit that, the First Appeal was filed 16 years after the judgment and decree passed by the Trial Court and application for condonation of delay was not supported by the affidavit disclosing sufficient reasons. Thereafter, the First Appellate Court directed the Tahsildar to file a better affidavit and better affidavit was filed by the Tahsildar. The First Appellate Court after considering the better affidavit filed, has allowed the application and condoned the delay of 16 years in filing the appeal. Noticing the fact that, the defendants/respondents No.1 and 2 did not contest before



the Trial Court by filing written statement and leading evidence, permitted the defendants to file written statement and lead evidence.

4. Learned counsel for the appellants would submit that, the delay of 16 years is not properly explained even in the second affidavit. The defendants/respondents No.1 and 2 had filed an application under Order IX Rule 13 of the Code of Civil Procedure (Code) to set-aside the exparte decree and same appears to have been dismissed from the statement made by the Tahsildar in his affidavit and that application is said to have been filed in the year 2006. Thus, it is urged that the respondents had the knowledge of the decree in 2006. If the application under Order IX Rule 13 of the Code was dismissed, the respondents No.1 and 2 should have taken steps either to challenge the said order dismissing the application or should have filed an appeal immediately before the First Appellate Court is the contention. Appeal is filed 16 years, and the respondents No.1 and 2 were not diligent. Thus, urged that the First Appellate Court committed an error in allowing the application for condonation of delay of



16 years and remanding the matter to the Trial Court by setting-aside the judgment and decree passed by the Trial Court.

5. Learned Government Advocate would oppose the appeal on the premise that, necessary steps are taken by the officers of defendants No.1 and 2 and instructions were given to the Government Advocate to file the appeal. It appears that appeal was not filed in time despite seeking instructions from the Office of the Tahsildar.

6. It is further submitted that an application is also filed under Order IX Rule 13 of the Code within a reasonable time to set-aside the *ex-parte* decree and the said application is dismissed. There were further instructions to take necessary steps against the said order dismissing the application under Order IX Rule 13 of the Code to set-aside the *ex-parte* decree.

7. It is the submission that, 11 acres of public land is involved in this litigation and the plaintiffs are claiming adverse possession over the property and a case of this



nature requires to be considered on merit by considering the evidence of both parties. Merely, because there is some inaction or lapse or negligence on the part of the Government officials, or advocates, the plaintiffs should not be given the benefit of an *ex-parte* decree involving such a huge extent of land. Thus, it is urged that, the appeal be dismissed and let the suit be contested on merits permitting the defendants to contest the suit by filing written statement.

8. The Court has considered the contentions raised at the Bar and perused the records.

9. The judgment and decree were delivered on 28.09.2004 by the Trial Court. The affidavit filed by the Tahsildar would indicate that, the Tahsildar has instructed the Government Advocate to file necessary application to set-aside the *exparte* decree.

10. Application is filed under Order IX Rule 13 in 2006. It is noticed that there is delay of 16 years in filing the appeal, and the Government has not led evidence to explain



the delay. Since, the Tahsildar has filed an affidavit furnishing various dates and steps said to have been taken to pursue the application under Order IX Rule 13 of the Code, the Court is of the view that an enquiry should have been held on the said steps said to have been taken by the Tahsildar and the other Government Officials, to pursue the application under Order IX Rule 13 of the Code and appeal to set aside decree.

11. The Court has decided the application for condonation of delay merely based on the averments made in the affidavit.

12. Under the circumstances, without getting into the merit of the application filed by the respondents/Government for condonation of delay, the Court is of the view that parties be permitted to lead evidence on their respective contentions on delay and thereafter, appropriate order be passed on the application for condonation of delay.

13. Hence the following:



ORDER

- (i) Miscellaneous Second Appeal is ***allowed-in-part.***
- (ii) The impugned judgment and decree dated 10.08.2021 on the file of the Principal District Judge, Udupi are set-aside.
- (iii) Matter is remitted to the First Appellate Court for fresh consideration on the application for condonation of delay.
- (iv) The parties are permitted to lead evidence in support of their respective claims.
- (v) It is made clear that, this Court has not expressed any opinion on the merits of the application or merits of the suit.
- (vi) Parties shall appear before the First Appellate Court on **16.04.2026** without any further notice.



(vii) All other applications filed before this Court
do not survive for consideration.

(viii) Registry to send the Trial Court Records to
the First Appellate Court.

SD/-
(ANANT RAMANATH HEGDE)
JUDGE

BRN

List No.: 2 Sl No.: 5