



CNR: KAHC010366282022

NC: 2026:KHC:50352
MFA No. 5699 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

MISCELLANEOUS FIRST APPEAL NO. 5699 OF 2022 (CPC)

BETWEEN:

SMT. MANJULABAI BEDAKEKAR
ALIAS NAGALAKSHMI
D/O M G KRISHNOJI RAO
W/O DR B SURESH
AGED 60 YEARS
NO. 532/A, 5TH CROSS, 4TH MAIN,
SSA ROAD, HEBBAL
BENGALURU - 560024.

...APPELLANT

(BY SRI. A.MOHAMMED TAHIR, ADVOCATE)

AND:

1. SRI. NAGULAL RAO
S/O M G KRISHNOJI RAO
AGED 59 YEARS
NO. 274/349, OPPOSITE TO
PRIMARY HEALTH CENTRE
NAGAWARA MAIN ROAD
KADUGONDANAHALLI
BENGALURU - 560045.



Digitally signed
by
GAVRIBIDANUR
SUBRAMANYA
GUPTA
SREENATH
Location: HIGH
COURT OF
KARNATAKA



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2. SRI KRISHNOJIRAO
S/O LATE GIRIMOJI RAO
AGED 83 YEARS
NO. 274/349, OPPOSITE TO
PRIMARY HEALTH CENTRE
NAGAWARA MAIN ROAD
KADUGONDANAHALLI
BENGALURU - 560045.
3. SRI P C THAMBI
FATHER NAME NOT KNOWN
AGED 75 YEARS
SIDDARAMAIAH GARDEN
ST. THOMAS TOWN
BENGALURU - 560084.
4. SMT. SOSAMMA
W/O P C THAMBI
AGED 68 YEARS
SIDDARAMAIAH GARDEN
ST. THOMAS TOWN
BENGALURU - 560084.
5. SRI SANTHOSH KUMAR
S/O P C THAMBI
AGED 45 YEARS
SIDDARAMAIAH GARDEN
ST. THOMAS TOWN
BENGALURU - 560084.

...RESPONDENTS

(BY SRI. VIKHAR AHMED B., ADVOCATE FOR R-1
R-2 - SERVED AND NOTICE TO R-3 TO R-5 IS DISPENSED
WITH VIDE ORDER DATED 17.08.2022)



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THIS MFA IS FILED U/O 43 RULE 1(c) OF CPC AGAINST THE ORDER DATED 09.06.2022, PASSED IN O.S.NO.8856/2017, ON THE FILE OF THE VII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU, DISMISSING THE APPLICATION FILED UNDER ORDER 9 RULE 9 R/W SECTION 151 OF CPC.

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

CORAM: HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

ORAL JUDGMENT

This appeal is preferred by the appellant, who was plaintiff in O.S.No.8856/2017, challenging the order dated 09.06.2022, passed on IA. filed under Order IX Rule 9(1) read with Section 151 of the Code of Civil Procedure (for short, 'CPC'), by the VII Addl.City Civil and Sessions Judge, Bengaluru, (for short, 'trial Court').

2. The respondent No.1 is represented by learned counsel. Respondent No.2 is served, but unrepresented and



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the notice to respondent Nos.3 to 5 is dispensed by this Court at the risk of the appellant.

3. Though the matter is listed for admission, with the consent of both parties, the same is taken up for final disposal.

4. Parties shall be referred to as per their ranking before the trial Court.

5. Brief facts of the case are as under:

Plaintiff filed a suit against the defendants seeking for a decree of partition and separate possession of the suit schedule properties mentioned therein for allotment of her share and to award *mesne* profits and other consequential relief of declaration with regard to the transaction made by the defendants *inter se* will not be binding on the plaintiff or her share with regard to suit schedule properties.

6. Along with the plaint, an application came to be filed by the plaintiff under Order XXXIX Rules 1 and 2 read with Section 151 of CPC, which came to be allowed and an order of *ex parte* temporary injunction was granted, restraining the



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defendants 1 and 2 from alienating the suit schedule Item No.1, 2, 3, 4 and 6 of the properties, till the next date of hearing, at the initial stage, by its order dated 01.01.2018. However, the said application thereafter came to be dismissed on 04.02.2019 on merits on contest by the defendants. The, defendants No.1 and 2 entered appearance in the suit proceedings and filed their written statement. Defendants Nos.3 to 5 were placed *ex parte*.

7. On 09.06.2022, the matter was listed for recording of the evidence of plaintiff. Despite granting sufficient opportunities, the evidence was not recorded. On that day, the trial Court passed the following order:

"Proxy counsel. PW 1 absent.

Plaintiff submits on record counsel father has hospitalised no medical proof. On 17.3.2022 and on 22.4.2022 it has adjourned as plaintiff evidence. Hence called at 12.30 p.m.

PW1 absent and counsel present and plaintiff absent. Again called at 1.25 p.m. counsel for plaintiff absent. PW1 absent from last two hearing dates 17.3.2022 and 22.4.2022 case was adjourned and PW1 was absent, hence dismissed for non-prosecution.

Sd/ 9/6/2022.



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Plaintiff counsel appear at 4.06 p.m. filed IA under Section 151 of CPC and IA under Order 9 Rule 9 read with 151 of CPC. Plaintiff counsel told his father has met with an accident, plaintiff counsel was engaged in hospital and was watching him.

Defendant counsel present submitted IA may be allowed on heavy cost. It is said in so in morning sessions, no medical proof of counsel father was hospitalised and 17.3.2022 and 22.4.2022 it was adjourned as PW1 was absent on both dates. Hence IA. is hereby rejected, suit is dismissed."

8. By virtue of this order dated 09.06.2022, it is seen that, initially the suit came to be dismissed for non-prosecution and at the later part of the day i.e., at 4.06 p.m., the trial Court rejected the application filed by the plaintiff for recalling the order dismissal of the suit for non-prosecution, thereby dismissing the suit of the plaintiff. It is this order of rejection of the application filed by the plaintiff under Order IX Rule 9(1) read with Section 151 of CPC in the original suit proceedings on the very same day of dismissal of the suit, that is being challenged before this court.



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9. The learned counsel for the appellant/plaintiff vehemently contends that, it is no doubt true that the suit was listed for recording of plaintiff's evidence and it is also true that several adjournments were taken by the plaintiff. But, he contends that on the particular day i.e., on 09.06.2022, the father of the counsel on record appearing for the plaintiff was hospitalised and hence, adjournment was sought by a proxy counsel. The plaintiff was also not present on that day. On noting the absence of the plaintiff for the last two hearing dates, the case was adjourned. Since the plaintiff was not present on 09.06.2022, the suit came to be dismissed. Therefore, learned counsel contends that that absence of the counsel on record was due to *bona fide* reasons stated in the application filed on the very same day at 04.06 p.m. by the appellant/plaintiff under Order IX Rule 9(1) read with Section 151 of CPC. Learned counsel further submitted that the absence of the counsel was due to *bona fide* reasons i.e., his father was not keeping well and he was hospitalised. Therefore, he had sought an adjournment to proceed further in the matter on another day and the plaintiff was also not present,



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which was not a deliberate attempt to protract or prolong the proceedings. Therefore, the non-appearance of the plaintiff and the counsel on record was due to *bona fide* reasons, which ought to have been considered by the trial Court and the application ought to have been allowed on the very same day, which was moved at 04.06 p.m., rather than dismissing the application on hyper-technical grounds. On these grounds, learned counsel seeks to allow the application.

10. Learned counsel further contends that, the application filed by the appellant/plaintiff to recall the order of dismissal of the suit for non-prosecution on the very same day, was not objected to by the counsel for the defendant Nos.1 and 2, rather, they in fact had stated, which is on record, that the application could be allowed on costs. That being so, the trial Court ought to have allowed the application by imposing cost, which would not have caused any hardship to the defendants, rather it could have facilitated the plaintiff to lead evidence. Having not done so, an opportunity has been denied to the appellant/plaintiff to contest the matter despite an application having been filed on the very same day to recall the said



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order. Hence, on these grounds, learned counsel seeks to allow the appeal and consequently set aside the impugned order and to permit the appellant/plaintiff to prosecute and continue with the suit proceedings.

11. Per contra, learned counsel appearing for respondent No.1 vehemently objects to the appeal being allowed, by contending that there were no sufficient materials placed on record with regard to the medical proof or hospitalisation records of father of the counsel representing the plaintiff before the trial Court, so also, the plaintiff was also absent on the said day. To add to further woes, despite the dismissal of the suit, learned counsel for the respondents contends that, even before this Court in this appeal, there was no representation on behalf of the appellant and hence, the appeal came to be dismissed for non-prosecution on 23.06.2026, which apparently shows the careless attitude and callousness of the appellant/plaintiff in prosecuting not only the suit, but, also the present appeal. But, the learned counsel for the respondents fairly submits that, no doubt before the trial Court, he did not have objections to the application being allowed, because he



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was interested in the suit being disposed of expeditiously, but, having not done so and even before this Court, there is no diligence shown by the appellant/plaintiff in prosecuting the appeal, therefore he seeks for dismissal of the appeal.

12. I have heard learned counsel for the appellant/plaintiff and learned counsel for respondent No.1.

13. The fact remains that the suit was listed for recording of evidence of the plaintiff on 09.06.2022. It is also a fact that the plaintiff had taken adjournments for three times prior to the said date and on the said date also, the plaintiff was absent, so also, the counsel for the appellant/plaintiff. Though a proxy counsel had represented plaintiff and sought adjournment on the ground that the father of counsel on record was hospitalized and sought for an adjournment to adduce evidence on the next date of hearing, however, the trial Court was not satisfied with the reasons assigned and it dismissed the suit for non-prosecution in the pre-lunch session. However, in the post-lunch session, an application came to be moved before the very same Court at 04.06 p.m., requesting the Court to allow the application filed under Order IX Rule 9(1) read with Section



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151 CPC, by pleading that the father of the counsel on record of the plaintiff had met with an accident, and the plaintiff's counsel was engaged in taking care of his father. It is also a matter on record that this application was not seriously objected to by the defendant Nos.1 and 2, who had in fact stated that the application could be allowed on payment of costs.

14. When such being the case, the trial Court ought to have allowed the application, listed the matter for recording of evidence by giving a reasonable opportunity, and proceeded further in the matter, rather than, dismissing the suit and the application filed for restoration. It is relevant to mention that the trial Courts need not take a hyper-technical approach in dismissing the application when an application is made on the very same day seeking restoration of the suit. At the end of the day, it is a reasonable opportunity which requires to be given and of course, certain amount of costs could have been imposed against the plaintiff for taking unnecessary adjournments or for protraction of the proceedings. Having not done so, this Court deems it appropriate that the impugned



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order passed by the learned trial Judge suffers from illegality and perversity for having not considered the application which was filed on the very same day. Therefore, I am in agreement with the learned counsel for the appellant that the appeal requires to be allowed.

15. Hence, I pass the following :

ORDER

(i) The Appeal is allowed.

(ii) The impugned order dated 09.06.2022, passed by the VII Addl.City Civil and Sessions Judge, Bengaluru, in O.S.No.8856/2017 is hereby set aside.

(iii) The application filed under Order IX Rule 9(1) read with Section 151 of CPC is hereby allowed.

(iv) The suit is restored to its original file, subject to payment of cost Rs.5,000/- for proceeding further in the matter, payable to defendant Nos.1 and 2.

(v) The trial Court is directed to provide an opportunity to the appellant/plaintiff to proceed further in the matter by recording the evidence.



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(vi) It is open for the trial Court to impose cost if unnecessary adjournments are sought by the plaintiff.

Sd/-
(PRADEEP SINGH YERUR)
JUDGE

bk/
List No.: 1 SI No.: 27