HC-KAR

NC: 2026:KHC:61639
RSA No. 334 of 2018

CNR: KAHC010355132018

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

REGULAR SECOND APPEAL NO. 334 OF 2018 (DEC-)

BETWEEN:

1. SMT VASANTHI
W/O SRI BHOJA SHETTY
AGED ABOUT 63 YEARS
R/O DOOR NO.3-8/1, ALIKE,
MOODUPERUR VILLAGE AND POST
MANGALURU TALUK
DAKSHINA KANNADA – 574 151

2. SMT. LAKSHMI ALIAS BHAVANI
W/O VISHWANATHA SAMANI,
AGED ABOUT 57 YEARS
R/O MAYILKODY HOUSE,
KURIYALA VILLAGE AND POST
BANTWAL TALUK – 574 211

(BOTH ARE REPRESENTED BY
SON OF APPELLANT NO.1
SRI BHASKAR @ BHASKAR SHETTY
S/O SRI BHOJA SHETTY
AGED ABOUT 43 YEARS
R/O DOOR NO.3-8/1, ALIKE
MUDUPERUR VILLAGE AND POST
MANGALURU TALUK,
DAKSHINA KANNADA – 574 151
(AS THEIR POWER OF ATTORNEY HOLDER)

…APPELLANTS

(BY SMT. NIRUKSHA D.J., FOR
SRI. SHOWRI H.R., ADVOCATES)

Digitally signed by VANDANA S
Location: High Court of Karnataka

AND:

1. SMT PADMAVATHI
W/O SRI VIJAYA SHETTY
AGED ABOUT 43 YEARS

2. SMT SUJATHA ALIAS SUNDARI
W/O SRI SURESH
AGED ABOUT 39 YEARS
NO.124/2014

3. SRI NARAYANA SHETTY
S/O LATE SRI DOGU SHETTY
AGED ABOUT 71 YEARS
SINCE DEAD BY HIS LRs

3(a) SRI. SANTHOSH SHETTY,
S/O LATE NARAYANA SHETTY,
AGED ABOUT 28 YEARS,

3(b) SRI SANDHESH SHETTY,
S/O LATE NARAYANA SHETTY,
AGED ABOUT 26 YEARS,

3(c) SRI. POORNIMA
D/O LATE NARAYANA SHETTY
ALL ARE RESIDENT OF: ALIKE,
MOODUPERUR VILLAGE AND POST,
MANGALURU TALUK – 574 151

4. SMT DEVAKI
W/O SRI NARAYANA SHETTY,
AGED ABOUT 51 YEARS

ALL ARE R/AT ALIKE,
MOODUPERUR VILLAGE AND POST
MANGALURU TALUK – 574 151

…RESPONDENTS

(BY SRI. O. SHIVARAMA BHAT, ADV. FOR R1,
R2 & R4 AND R3 (A TO C))

THIS RSA FILED UNDER SEC.100 OF CPC 1908, AGAINST THE ORDER ON IA NO.1 DATED 01.01.2018 PASSED IN RA NO. /17

ON THE FILE OF THE PRINCIPAL DISTRICT JUDGE, D.K.MANGALURU, REJECTING THE IA NO.1 UNDER SEC.5 OF THE LIMITATION ACT AND ALSO REJECTING THE APPEAL MEMO FILED AGAINST THE JUDGMENT AND DECREE DATED 23.02.2017 PASSED IN OS NO.124/2014 ON THE FILE OF PRINCIPAL SENIOR CIVIL JUDGE AND CJM., MANGALURU, D.K.

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

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL JUDGMENT

Appellants were plaintiffs in O.S.No.124/2014 filed by them against the respondents – defendants for declaration, partition and other reliefs in relation to the suit schedule immovable properties. After contest, the said suit was dismissed by the Trial Court vide impugned judgment and decree dated 23.02.2017, which was assailed by the appellants – plaintiffs in unnumbered RA No.- of 2017 along with an application I.A.No.1 for condonation of delay under Section 5 of the Limitation Act. The said application having been opposed by the respondents – defendants, the First Appellate Court recorded evidence of the GPA holder of the appellants as AW1 – Bhaskar Shetty and Medical Certificate was marked as Ex.P1, while, the respondents – defendants did not adduce any oral or documentary evidence. After hearing the parties, the First

Appellate Court proceeded to pass the impugned order rejecting the contention of the appellants that they could not file the appeal within the prescribed period on account of ill-health and proceeded to reject I.A.No.1 by refusing to condone the delay and consequently, dismissed the appeal by passing the impugned order, which is assailed in the present appeal, which was admitted by this Court to consider the following substantial question of law:

> *Whether the First Appellate Court was justified in rejecting I.A.No.1 filed by the appellants under Section 5 of the Limitation Act thereby refusing to condone delay of 116 days in filing the appeal and consequently, dismissing the appeal by passing the impugned order / judgment and decree?*

2. Heard learned counsel for the appellants and learned counsel for the respondents and perused the material on record.

3. A perusal of the material on record including application – I.A.No.1 filed by the appellants – plaintiffs along with the accompanying affidavit will clearly indicate that it is the specific contention of the appellants – plaintiffs that their inability and omission to file the appeal within the prescribed period was due to bonafide reasons, unavoidable circumstance, sufficient cause and

due to the ill-health of the appellants – plaintiffs, who have established the same by producing Medical Certificate marked as Ex.P1. In addition thereto, the material on record also establishes that the appellants had entrusted the file to their lawyer at Bangalore, who did not take necessary steps to file the appeal within the prescribed period. It is also relevant to state that while considering an application for condonation of delay, it is the cause that is relevant and not the length of delay and consequently, in the light of the unimpeached, unchallenged and uncontroverted material on record produced by the appellants – plaintiffs, I deem it just and appropriate to adopt a justice oriented approach and set aside the impugned order and allow I.A.No.1 filed in unnumbered R.A.No.-/2017 and condone the delay of 116 days in filing the appeal. Accordingly, substantial question of law is answered in favour of the appellants – plaintiffs.

4. In the result, I pass the following:

ORDER

(i) The appeal is hereby ***allowed***.

(ii) I.A.No.1 filed in unnumbered R.A.No.-/2017 on the file of the Prl. District Judge, D.K., Mangaluru, is hereby allowed. Delay of 116 days in filing unnumbered R.A.No.-/2017 stands condoned.

(iii) Matter is remitted back to the First Appellate Court for reconsideration on merits and in accordance with law as expeditiously as possible preferably within a period of six months from the date of appearance of the parties before the First Appellate Court.

(iv) Parties shall appear before the First Appellate Court on **07.12.2026.**

(v) All rival contentions on all aspects of the matter are kept open and no opinion is expressed on the merits / demerits of the rival contentions.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

SV
List No.: 1 Sl No.: 24