

KABR020013032015



**IN THE COURT OF II ADDL SENIOR CIVIL JUDGE,
BENGALURU RURAL DISTRICT, BENGALURU.**

Present : Smt.**CHINMAYEE. R.H**, B.A.L, LLB,
II Addl.Sr.Civil Judge,
Bengaluru(R)Dist.,Bengaluru.

Dated this the 4th Day of November 2025

RA.No.85/2015

Appellants : Parvathamma and Another

Vs

Respondents : Venkatalakshmamma and Others

PARTIES TO IA.No.1

Applicant/
Appellants : Parvathamma and Another

Vs

Opponents/
Respondent No.9 : Raja Rao

**Orders on IA.No.1 filed by Appellants
Under Section.5 of Limitation Act**

The advocate for Appellants has filed this application to condone the delay of 13 years 7 months in preferring this appeal.

2. In the accompanying affidavit, Appellant No.1 has sworn that the respondents have filed suit in OS.No.598/2000 on the file of II.Addl.Civil Judge, Bengaluru Rural District for the relief of Redemption of Mortgage in respect of property mentioned in the decree passed by the court below. The husband of respondent No.1 has created registered Mortgage Deed in favour of father-in-law of 1st respondent in respect of property mentioned in the decree by executing registered Mortgage Deed for a sum of Rs.1100/- and thereby executed registered Deed on 24.01.1957. The duration of redemption as set forth in the document is for a period of 20 years. Further, the day on which, mortgage was created by husband of 1st respondent in favour of father-in-law of appellant No.1, the father-in-law has improved the lands and even today the appellants are

cultivating the land in question by leveling the land and also by digging borewell. The written statement had been filed by the husband of appellant No.1 and others in the above suit and thereby questioned the suit by attacking on the grounds of limitation. Without going to the important question of law, the impugned judgment and decree was passed by the court below. The husband of appellant No.1, who was convicted and undergoing imprisonment and he had not revealed the existence of the usufructuary mortgage of property in question. Neither the appellant No.1 nor any appellants were aware of the defense taken by the husband of appellant No.1. However, the present appellants were brought on record as LR's of deceased husband of appellant No.1. Due to lack of knowledge and legal implications and also for the bad advice by legal practitioner, the appellant No.1 was not able to decide what is to be done in protecting the right over the property in question. On various consultations with legal experts, the appellant No.1 had no other alternative except to file this appeal. The delay in preferring this appeal is bonafide one and also due to lack of legal knowledge ought to have been imparted by the

persons, who undertook the brief in connection with the case adjudicated before the court below. Thus for the above reasons, the appellants prays to condone the delay in preferring the appeal.

3. The respondent No.9 has objected the said application on the ground that the appellants herein, who claim to be the wife and daughter of Shivarudrappa S/o Nanjappa, who was 3rd defendant in OS.No.598/2000. The said suit was filed against Nanjappa who died during the pendency of the said suit. It is submitted that Nanjappa had contested the said suit by filing the written statement and later the legal heirs of Nanjappa, including Shivarudrappa filed their additional written statement. None of the legal heirs of late Nanjappa, who were the parties to the said suit, had made any attempt to question the Judgment and decree dated:31.01.2002 passed in OS.No.598/2000 and thus the said Judgment and decree attained finality in the year 2002. The husband of appellant No.1 by name Shivarudrappa who was JDR No.3 in the Execution Case No.33/2007 had filed Vakalath on 03.01.2009 but even after filing of Vakalath in Execution Case

No.33/2009, said Shivarudrappa had never made an attempt to file any appeal challenging the Judgment and decree dated:31.01.21002 passed in OS.No.598/2000 and hence, the appellants herein have no locus standi to prefer any appeal in the year 2015 and the appellants do not have any independent rights and their alleged claim is only through late Shivarudrappa which was refused by the court by passing decree in favour of respondents herein in OS.No.598/2000. It is submitted that the appellants herein have also filed vakalath in Execution Case No.33/2007 which is pending before the I Addl Civil Judge, Bengaluru Rural District. The appellants have not assigned any convincing, valid and sufficient reasons in the affidavit accompanying IA.No.1 for such inordinate delay and further the appellants have utterly failed to explain each day delay in seeking condonation of 14 years. It is submitted that in the year 2002 itself the appellants were well aware of passing Judgment and decree dated 31.01.2002 in OS.No.598/2000 and they had the knowledge about participation of Shivarudrappa in Execution proceedings. It is submitted that the appellants have filed this false and frivolous application after lapse of 14 years which cannot

be entertained and thereby prays to dismiss the application by imposing exemplary costs.

4. The case was posted for Enquiry on the application where the SPA holder of Appellants has filed affidavit in lieu of examination in chief and is examined as Pw.1 and got marked Ex.P1 and 2. During the cross examination of PW.1, advocate for respondent has confronted the document and got marked the same as Ex.D1. The respondents have not led any evidence.

5. Heard the learned counsels for both appellants and respondent No.9 and perused written arguments furnished by the advocate for appellants.

6. The following Points arise for my consideration:

1. Whether the Appellants have made out grounds to condone the delay of 13 years 7 months in preferring the present Appeal?
2. What Order ?

7. Considering the application, objection and the plaint averments, my answer to the above points is as follows:

Point No.1: In the Negative

Point No.2: As per the final Order for the following:

REASONS

Point No.1: The appellants herein have filed the above application to condone the delay of 13 years 7 months in preferring the present appeal urging that OS.No.598/2000 was filed for the relief of Redemption of Mortgage against one Nanjappa, husband of Appellant No.1 and others. The said suit was ended in decree on 31.01.2002. It is pertinent to note that the appellants herein have stated that husband of Appellant No.1 Shivarudrappa was convicted and was undergoing imprisonment and that he had not revealed regarding existence of mortgage and appellants continued to be in possession and enjoyment of the property.

8. It is pertinent to note that of course the defendant No.3 in OS.No.598/2000 was Shivarudrappa, who is the husband of appellant No.1 and was convicted and was undergoing imprisonment. However,

it is important to note that said Shivarudrappa had received Notice on Execution Case No.33/2007 and thereby had filed Vakalath on 03.01.2009. Therefore, it is very clear that said Shivarudrappa had sufficient knowledge of the suit, outcome of the suit and filing of Execution Case. In spite of the said fact the said Shivarudrappa did not bother to challenge the Judgment and decree passed in OS.No.598/2000.

9. Further, it is also important to note that Pw.1 is none else than the son-in-law of said Shivarudrappa and during the course of cross examination he has stated that he had married appellant No.2, who is the daughter of Shivarudrappa on 30.11.2000. Even considering the fact that appellant No.1 and 2 are ignorant and illiterate persons, it is relevant to mention here that Pw.1, who being the son-in-law of Shivarudrappa had knowledge of the suit in OS.No.598/2000 and Execution Case No.33/2007 as Shivarudrappa would have shared the fact of suit for mortgage.

10. The appellants herein, in spite of fact that they had knowledge of outcome of judgment and decree and filing of Execution Case, they have not preferred appeal in time. Further, it is also important to note that appellants herein have entered appearance in Execution Case No.33/2007 after the death of Shivarudrappa on 22.04.2014. Even in the year 2014 also the appellants herein though having every knowledge of judgment and decree have not preferred appeal in time.

11. It is pertinent to note that delay of each and every day has to be explained by the appellants herein. In the said petition the appellants have barely contended that due to conviction of Shivarudrappa, the appellants had no knowledge of the judgment and decree. The said fact cannot be believed as Shivarudrappa and appellants were staying together at the same address and under the same roof. Under these circumstances, the appellants have made bald allegation, which cannot be considered as it is the duty of the litigant to be vigilant with regard to the pending of case. In this regard this court relies upon the Maxim *“vigilantibus et non dormientibus jura subveniunt”* which means

that the law come for rescue of those who are vigilant but were not sleepy.

12. In the case on hand, the appellants have not establish and proved appropriate reason for condoning the delay in preferring the appeal. The appellants have slept for ages and thereafter have preferred this appeal, which cannot be entertained by this court. The decisions relied upon by the learned advocate for appellants does not come in the aid of present facts of case as the appellants have not mentioned the details as to what prevented them for preferring the appeal in time. Mere giving reason of conviction of Shivarudrappa is not sufficient for the court to condone the delay and hence, I answer the above Point in the Negative.

13. **Point No.2:** For the reasons discussed supra, I proceed to pass the following:

ORDER

IA.No.1 filed by Appellants under Section.5 of Limitation Act is rejected. Accordingly Appeal is dismissed.

No order as to costs.

Re-transmit the trial court records forthwith.

(Dictated to the steno, typed by her then corrected by me and pronounced in the open court on this 4th Day of November 2025)

(CHINMAYEE.R.H)
II Addl.Sr.Civil Judge,
Bengaluru (R) District,Bengaluru