

KABI600005272022



IN THE COURT OF THE CIVIL JUDGE & JMFC
SANDUR

PRESENT

Sri Md. Shaiz Chouthai, B.A.,LL.B. (Hons.), LL.M,(M.L.)

Civil Judge & JMFC, Sandur

Dated: 03rd day of July, 2026

CIVIL MISC. No. 6/2022

Petitioner/s : Smt. Maheshamma W/o K.S. Siddaiah,
Aged about 53 years,
Occ: Household work,
R/o 3rd ward, Thoranagallu village,
Sandur Taluk, Ballari District.

(By Sri. A.V.K, Advocate)

V/s

Defendant/s : 1. K. Parvathi W/o K. Nagaraja,
D/o Rudrappa,
Aged about 42 years,
R/o Kodalu village,
Sandur Taluk, Ballari District.

2. K. Lakshmi W/o K. Anjinappa,
D/o K. Rudrappa,
Aged about 40 years,
R/o Vaddu village,
Sandur Taluk, Ballari District.
3. K. Thippamma W/o K. Maruthi,
D/o K. Rudrappa,
Aged about 38 years,
R/o Vaddu village,
Sandur Taluk, Ballari District.
4. K. Nagamma W/o K. Onkara,
D/o K. Rudrappa,
Aged about 38 years,
R/o Kodalu village,
Sandur Taluk, Ballari District.
5. K. Thippeswamy S/o K. Rudrappa,
Aged about 26 years,
R/o Kodalu village,
Sandur Taluk, Ballari District.
6. K. Thippeswamy S/o K. Rudrappa,
Aged about 28 years,
R/o Kodalu village,
Sandur Taluk, Ballari District.

(R1 to R6 By Sri. T.M.S., Advocate)

ORDERS

The instant petition is filed by the Petitioner / defendant
No.3 U/O.IX Rule 9 R/w Sec. 151 of C.P.C. seeking to set aside

the *exparte* judgment and decree passed in O.S. No.135/2019 dated: 09.03.2020 by this Court and permit her to contest the case by filing written statement.

2. The brief facts of the petition are as under:-

The respondent no.1 to 4 had instituted suit against the petitioner and respondent no.5 and his brother K.Thipperudra for partition and separate possession in respect of suit property in O.S.No.135/2019 before this court. The suit came to be decreed on 09.03.2020. The said K.Thipperudra died after the judgment and decree.

3. It is submitted that the petitioner had earlier not received the summons from the court since the respondent no.1 to 4 had not furnished correct address. Subsequently, the summon issued through RPAD was served on petitioner. However, the petitioner is illiterate and having no knowledge about the court proceedings. Consequent to the judgment and decree, the respondent no.1 to 4 have initiated final decree proceedings in

FDP No.1/2021. Even in that proceedings the notice is not served to the petitioner. In the meantime, the court appointed surveyor to conduct survey as per the preliminary decree. The Taluk Surveyor, Sandur issued a notice to the petitioner and others on 18.03.2022 for conducting survey. It is at this point of time the petitioner came to know about the judgment and decree. Soon thereafter, the petitioner approached her learned counsel and obtained certified copies of judgment and decree in O.S.No.135/2019 on 28.03.2022. According to petitioner, the judgment in O.S.No.135/2019 is pronounced *ex-parte*.

4. It is submitted that the petitioner purchased the suit property bearing Sy.No.12/1 measuring 02.65 acres through Regd. Sale deed on 30.10.2018 from its previous owner i.e., defendant no.1 – Thipperudrappa S/o Rudrappa. At the time of mutation, the respondent no.1 to 5 raised objections. The dispute culminated into the proceeding before Taluk Office, Sandur in case bearing No.221/2018-19. Meanwhile, the matter ended in compromise and the respondent no.1 to 5 submitted no-objections

to change the mutation in favour of petitioner. The respondent no.1 to 4 have full knowledge about the sale of property in favour of petitioner. The petitioner is the bonafide purchaser of the suit property and in possession and enjoyment of the same. The revenue records stand in her name.

5. Further, the respondent no.1 to 4, respondent no.5 and his brother Thipperudra colluding with each other have filed suit and obtained decree. The petitioner came to know about the decree on 22.03.2022. Soon thereafter, the petitioner filed this petition. The petitioner has filed a separate application for condonation of delay. Amongst other grounds, the petitioner prayed to allow the petition; to restore the suit and permit her to contest the suit. Hence this petition.

6. Upon service of notice, Sri. T.M.S Advocate appeared for respondent No.1 to 5 and filed objections. Although notice was served on respondent No.6, he did not opt to appear before

the court either in person or through counsel and thus placed absent.

7. In order to prove her case, the petitioner examined herself as PW1 and got marked Ex.P1 to Ex.P3 and closed her side of evidence.

8. Heard the learned Counsel for petitioner and respondent no.1 to 5. Perused the records.

9. After perusal of the pleading, the following points would arise for my consideration:-

1. Whether the petitioner has made out sufficient grounds to allow this petition?

2. What order?

10. My findings on the above points are as under:-

Point No.1 : In the Affirmative.

Point No.2 : As per final order for the following:-

REASONS

11. **POINT NO.1:-** The main ground urged by the petitioner to allow her petition and restore the case to contest the suit is that, she had initially not received the summons until it was served when the summons was issued through RPAD. The petitioner contend that she is illiterate woman having no knowledge about the court proceedings. During the course of cross examination, PW1 submitted that due to COVID19 pandemic she could not appear before the court. According to her, she came to know about the judgment and decree against her only on 18.03.2022 when the notice was served on her by the surveyor in final decree proceedings, and thereafter, obtained certified copies.

12. This petition is filed under Order IX Rule 9 R/w Sec. 151 of C.P.C. The said provision deal with a situation when the suit of the plaintiff is wholly or partly dismissed when he failed to appear before the court for hearing. In the instant case, the

situation is not the above stated. Here, the suit of the plaintiff is decreed after placing the defendant No.3/petitioner *exparte*. In other words, there is a *exparte* decree against the petitioner. Therefore, the proper provision to seek the relief as sought in the prayer is under Order IX Rule 13 of CPC. It is trite that when the averments made in the application / petition / plaint *ipso facto* reveal the actual relief sought and the intention of the applicant / petitioner / plaintiff in seeking the relief, the mere quoting of wrong provision does not warrant dismissal of the application / petition / plaint.

13. As per the provisions under Order IX Rule 13 of CPC, in a case where decree is passed *exparte* the defendant may apply to set-aside the said decree, and if the court is satisfied that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the court shall pass an order setting aside the decree as against him upon such terms as to costs. The proviso appended to the said provision speaks that no such decree shall be set-aside

merely on the ground of irregularity in the service of summons, if the court is satisfied that the defendant knew the date of hearing to enable him to appear and answer the plaintiff's claim.

14. The petitioner examined himself as PW1 and reiterated the contents of the petition. The claim made in the petition is not controverted by the respondent No.1 to 5. It is admitted fact that the summons to petitioner in O.S.No.135/2019 was served when it was issued through RPAD. As stated above, PW1 during her cross examination volunteered that she could not file this petition within time due to lockdown. Except admitting service of notice, nothing fruitful could be elicited from the PW1.

15. It is the claim of the petitioner that she purchased the suit property through Regd. Sale deed Dt: 30.10.2018 from its previous owner – defendant no.1. Since the shares have been determined *vide* judgment and decree Dt: 28.03.2022, it has direct effect on the proprietary right of petitioner over the suit property. That being so, in the interest of justice and equity, the

petitioner should be given an opportunity to defend the case. If she is not given an opportunity to contest the suit, she will suffer much hardship and would lose the opportunity to defend the case. In view of this the petitioner should be given an opportunity to contest the suit by filing the written statement and raise her legitimate right or interest, if any. The Hon'ble Apex Court in *Union of India Vs. Ram Charan (deceased) through his L.R.s*, reported in *AIR 1964 SC 215*, has observed that, in considering the sufficiency of cause for setting aside *ex parte* decree, the Court should not be extremely strict. A liberal approach is essential to do substantial justice between the parties. After perusal of the entire material on record, it transpires that, the petitioner has shown bonafide reasons for not appearing before the court. Similarly, she has shown sufficient cause for condoning the delay in filing the petition. Therefore, this Court is of the opinion that, the petitioner has made out sufficient grounds to allow the application. If the petition is not allowed, the petitioner would suffer great hardship. On the other hand, the respondents could

be able to rebut the contentions raised by the petitioner. Therefore, for the above said reasons, I answer this point in the **Affirmative.**

16. **POINT NO.2:-** In view of my discussion made supra, I proceed to pass the following:-

ORDER

The I.A. No.I filed under Section 5 of Limitation Act is hereby allowed. The delay of 24 months in filing the petition is condoned.

The petition filed by the petitioner under Order IX Rule 9 [Order IX Rule 13] R/w Sec. 151 of C.P.C. is hereby allowed.

Consequently, the judgment and decree dated: 28.03.2022 in O.S. No. 135/2019 is hereby set aside and the suit is restored on its original file.

The petitioner is permitted to contest the matter.

The Office is hereby directed to put up O.S. No.135/2019 on 05.09.2026 and the petitioner and respondents are directed to appear in O.S. No. 135/2019 on same day.

Both parties are directed appear in the said suit on 05.09.2026 without expecting any further notice from this Court.

(Dictated to the Stenographer directly on computer, typed by him, the same is corrected, revised, signed and then pronounced by me in the open Court, the 3rd day of July 2026).

(Md. Shaiz Chouthai)
Civil Judge & JMFC, Sandur.

ANNEXURE

LIST OF WITNESSES EXAMINED FOR PETITIONER:

PW.1 : Smt. Maheshamma W/o K.S. Siddaiah

LIST OF DOCUMENTS MARKED FOR PETITIONER

Ex.P.1 : Certified copy of judgment in O.S.
No.135/2019
Ex.P.2 : Certified copy of decree in O.S.
No.135/2019

Ex.P.3 : Certified copy of order sheet in O.S.
No.135/2019

LIST OF WITNESSES EXAMINED FOR RESPONDENTS :

– N I L --

LIST OF DOCUMENTS MARKED FOR RESPONDENT :

– N I L --

(MD. SHAIZ CHOUTHAI)
Civil Judge and J.M.F.C., Sandur.