



**IN THE COURT OF SENIOR CIVIL JUDGE AND
JMFC., AT SHIDLAGHATTA**

Dated this the 3rd day of August - 2026

:- PRESENT :-

Sri. MOHAMMED ROSHAN SHA M.A., LLB.,
Senior Civil Judge & JMFC.,
Shidlaghatta

Mis.14/2023

Petitioner:

Dr.H.S.Shashidhara Kumar
S/o H.N.Subramanya
Aged about 59 years
R/at No.B-1101, 11th Floor, Amber
RMZ Galleria residences,
Allasandra, BB Road, Yalahanka,
Bangalore 560064

(Rep by Sri.G.M.S Advocate)

- V/S -

RESPONDENTS:

1. Sri.Prabhu
S/o Late Narayanaswamy
Aged about 32 years
 2. Sri.Krishnappa
S/o Late Thimmarayappa
Aged about 69 years
 3. Sri.Ramanjinappa
S/o Late Thimmarayappa
Aged about 67 years
 4. Sri.Harisha
S/o Late Narayanaswamy
Aged about 34 years
- Respondent No.1 to 4 are
R/at Soluru Dinne village
Kundana Hobli
Devanahalli Taluk
Bangalore Rural District

(R2 to 4 Absent, Sri.GNN Adv for R1)

ORDERS

The petitioner has filed petition under order 9 Rule 13 R/w 151 of CPC and seeking to set aside the judgment and decree dated 14/03/2023 passed in OS.No.209/2022 and restore the matter. Thereby permitting to petitioner to contest the case.

2. Further the petitioner has filed IA.No.1 under section 5 of Limitation Act and seeking to condone the delay for filing this petition.

3. It has submitted that the respondent has filed suit for partition and separate possession in OS.No.209/2022, wherein the present petitioner is defendant and placed exparte. Finally the said suit decreed in favour of defendant No.1 on dated 14/03/2023. The present petitioner was arrived as defendant No.4. The petitioner has purchaser of suit item No.1 under registered sale deed dated 05/06/2008. since the petitioner is in possession and enjoyment of the same. The respondent No.1 colluded with other respondents filed said suit. But suit summons was not served to the petitioner. The

petitioner got known on 19/06/2023 about the decree passed in favour of respondent No.1. Thereafter obtain certified copies of suit documents and came to known that the petitioner was placed exparte in the said suit. The summons shows that the same served on the wife of the petitioner. However the wife has not informed to the petitioner. There is internal dispute between the petitioner and his wife. After knowing the fact of decree, the petitioner filed this petition. The suit item No.1 purchased on 05/06/2008. The vendor of the petitioner purchase the said property on 15/08/1995 from one Anjinappa and his children. The said Anjinappa acquired on 30/12/1966 from one Kalappa. The said Kalappa acquired from Thimmarayappa. The Thimmarayappa acquired under the grant dated 29/12/1959. The respondent No.1 is grandson of Thimmarayappa. The respondent No.1 filed suit without challenging the above said sale transactions. The respondent has challenge the sale transaction by filing PTCL before Assistant

Commissioner. Thereafter preferred appeal before Deputy Commissioner and finally filed writ petition in WP.No.799/17. The said writ petition was rejected on 23/11/2020. in order to grab the suit item No.1 the respondent No.1 filed suit wherein summons was not served to the petitioner. Hence prays to set aside the judgment and decree passed in OS.No.209/2022 and thereby to permit the contest the matter.

4. Other side the respondent No.1 appeared through counsel and filed objection. Other respondent absent. The respondent No.1 denied the contention of the petitioner. It has submitted that, the suit filed for partition and separate possession in OS.No.209/2022. The same has decreed on 14/03/2023. Accordingly revenue documents mutated. The petitioner had fully knowledge about the case filed by the respondent No.1. He has filed this petition in order to avoid the consequence of decree. The said petition is not maintainable. Hence prays to dismiss the same.

5. Further the petitioner has filed IA.No.1 under section 5 of Limitation Act and seeking to condone the delay to filing this petition. It has submitted that the respondent No.1 filed suit for partition and separate possession, wherein the petitioner placed exparte. But the summons was served on wife of the petitioner the same has not informed to the petitioner from her wife. After got known about the decree the petitioner obtain certified copies and filed this petition. There has bonafide reason that the petitioner has not aware of judgment and decree passed in OS.No.209/2022 dated 14/03/2023. hence prays to condone the delay.

6. Other side the respondent No.1 filed objection and denied the contention of the petitioner. It has submitted that there has no such valid grounds to condone the delay. The petitioner suppressed the true facts. Hence prays to dismiss the IA.No.1.

7. Heard. The following points are arise for my consideration:

1. Whether the petition filed under order 9 Rule 13 R/w 151 of CPC by the petitioner has liable for consideration?

2. Whether the application filed under Section 5 of Limitation Act filed by the petitioner has liable for consideration?

3. What order?

8. After going through the records and hearing the parties, the above points are answered as follows.

Point No.1 :In the **Affirmative**

Point No.2 :In the **Affirmative**

Point No.4 :As per the final order, for the following:

REASONS

9. POINT NO.1 and 2 :- The petitioner has filed petition under order 9 Rule 13 R/w 151 of CPC and set aside the judgment and decree dated 14/03/2023 passed in OS.No.209/2022 and restore the matter. Thereby permitting to petitioner to contest the case. The petitioner examined himself as PW1 and got

marked Ex.P1 certified copy of order sheet for OS.No.209/2022, Ex.P2 is the certified copy of judgment passed in OS.No.209/2022, Ex.P3 is the certified copy of sale deed, Ex.P4 is the certified copy of sale deed, Ex.P5 is the assistant commissioner court document, Ex.P6 is the Deputy Commissioner court document, Ex.P7 is the copy of WP.No.799/2017, Ex.P8 is the mutation, Ex.P9 to Ex.P42 are the RTC extracts, Ex.P43 is the Form No.15, Ex.P44 is the certified copy of plaint, Ex.P45 is the certified copy of interim application, Ex.P46 is the certified copy of deposition, Ex.P47 is the certified copy of summons for OS.No.209/2022.

10. It has submitted by the PW1 that the respondent No.1 has filed suit for partition and separate possession in OS.No.209/2022, wherein the present petitioner is defendant No.4 and placed exparte. Finally the said suit decreed in favour of respondent No.1 on dated 14/03/2023. The present petitioner was arrived as defendant No.4. The summons was not served to the petitioner. It has

served to the wife of petitioner and same has not informed to the petitioner due to family dispute. In order to the said alleged fact thePW1 got marked certified copy of order sheet at Ex.P1, wherein shown on order dated 05/11/2022 that the summons to defendant No.1 to 4 served called out absent placed exparte. Thereafter the matter has posted for plaintiff evidence and finally the suit has decreed in favour of the plaintiff on dated 14/03/2023. it has specific contention of the petitioner that the summons was not duly served to him. In order to said alleged fact, the PW1 got marked certified copy of summons at Ex.P47. On perusal of the said document wherein shara found that ಹುಕುಂ ಪ್ರಕಾರ ಈ ಸಮನ್ಸ್ ನಲ್ಲಿ ಕಂಡ D4 ನೇ ಪ್ರತಿವಾದಿಯ ವಿಳಾಸಕ್ಕೆ ಹೋಗಿ ವಿಚಾರ ಮಾಡಲಾಗಿ ಸದರಿಪ್ರತಿವಾದಿಯು ಜಾರಿ ಸಮಯದಲ್ಲಿ ಹಾಜರಿಲ್ಲವಾದ ಕಾರಣ ಅವರ ಹೆಂಡತಿಗೆ ಇದರ ನಕಲು ಮತ್ತು ಅರ್ಜಿ ಕಾಫಿಗಳನ್ನು ಕೊಟ್ಟು ಜಾರಿ ಮಾಡಿರುತ್ತೇವೆ. so as per the said shara found at Ex.P47 it has confirmed that the summons issued in suit matter has duly served to the wife of defendant No.4/ petitioner. As per order 5 Rule 15 of CPC held that

15. [Where service may be on an adult member of defendant's family.

[Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72, for rule 15 (w.e.f. 1.2.1977).]-Where in any suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf service may be made on any adult member of the family, whether male or female, who is residing with him.

Explanation.-A servant is not a member of the family within the meaning of this rule.

11. So on perusal of the Ex.P1 certified copy of order sheet, wherein the summons has duly served to the defendant No.4/ petitioner on behalf of him to the adult member of family who is none other then the wife of petitioner. But on perusal of the other

documents placed by the petitioner, which is certified copy of sale deed dated 05/06/2008. Accordingly the petitioner has purchased the suit schedule property item No.1 from his vendors under registered sale deed. On perusal of the certified copy of plaint for OS.No.209/2022 wherein at Para 5 the plaintiff pleaded that the defendant No.4 have created alleged revenue records and other documents in the absence of plaintiff and other members of the joint family. But the plaintiff has not pleaded about the registered sale deed dated 05/06/2008 wherein the present petitioner has purchased the suit schedule property item No.1. Further as per order 9 Rule 13 of CPC

Setting Aside Decrees Ex Parte

13. Setting aside decree ex parte against defendant. -

In any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court

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 make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit;

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also:

12. In view of said provision of law if decree is passed exparte against a defendant he may apply to the court by which the decree was passed for an order to set it aside and if he satisfy the court 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. In view of said fact herewant to refer the judgment of Hon'ble Supreme Court held in **(2000) 3 SCC 54:AIR 2000**

SC 1221 between Srivastava V/s R.K.Raizada wherein the Hon'ble Apex court held that ***even though there was negligence on the part of the defendant in an exparte decree, the same can be set aside after suitably compensating the other side with costs and on appropriate conditions, sufficient cause for non appearance refers to the date on which the absence was made a ground for proceeding exparte. The absence cannot be stretched to cover circumstances occurring prior to that date. Where sufficient cause is made out by the defendant on such date, he cannot be penalised for any previous negligence which had been overlooked and so condoned earlier.***

13. The Hon'ble supreme court observed that sufficient cause for the purpose of order 9 Rule 13 of CPC has to be construed as an elastic expression for which no hard and fast guidelines can be prescribed. The court have void discretion the deciding sufficient cause keeping in view of particular facts and circumstances of each case. In the present case the

defendant No.4 approached this court for setting aside the judgment and decree passed exparte. He has specifically pleaded that he did not got summons or knowledge about the service of summons. Even though it has served to the his wife. Therefore, the Where sufficient cause is made out by the defendant No.4 on such date, he could not able to appeared. Then he cannot be penalised for his non appearance. The liberal approach is essential to do substantial justice between the parties. In view of said observation along with present case facts wherein the petitioner is purchaser of the suit item No.1 from his vendors. The said vendors have purchased the property on dated 17/06/1998. Thereafter sold in faovur of the petitioner as per the Ex.P4. The plaintiff while filing this suit for partition did not disclosed the fact of said alienation dated 05/06/2008 in favour of petitioner. Furthermore the summons has served to the wife of petitioner. But petitioner himself pleaded that there has dispute among the family. So the service of summons has

not informed from wife of petitioner to the petitioner. So it has shown sufficient cause of action for not service of summons properly. Therefore, it has necessary to consider the said petition.

14. Further the petitioner has filed IA.No.1 under section 5 of Limitation Act and seeking to condone the delay for 123 days. The judgment and decree passed on dated 14/03/2023 and present petition filed on 17/07/2023. So there has 96 days delay for filing this petition. The petitioner submit that the summons has served to her wife and same has not intimated to him. He had got knowledge about the judgment and decree recently and after obtaining the certified copies and filed this petition. If said delay has condoned it has not cause any hardship or injustice to the other side. So the said application is liable for consideration. In view of said aforesaid reason and discussion, the said petition liable consideration. Hence point No.1 and 2 answered in **Affirmative**

15. **Point No.3:-** In view of the above reason and discussion, I pass the following:

ORDER

The application filed under section 5 of Limitation Act is allowed with cost of Rs.5000/- and condone the delay for 96 days to filing this petition.

The petition filed under order 9 Rule 13 R/w 151 of CPC is hereby allowed with cost of Rs.5000/-.

Accordingly set aside the judgment and decree dated 14/03/2023 passed in OS.No.209/2022 by this court. Hence office is directed to restore the OS.NO.209/2022 and permit to the petitioner/defendant No.4 to contest the matter. Hence put up the said case record on dated 02/09/2026.

(Dictated to the Stenographer directly on computer typed by her, corrected by me and then pronounced in the open court on this the 3rd day of August 2026)

**(Mohammed Roshan Sha)
Senior Civil Judge & JMFC.,
Sidlaghatta.**

ANNEXURE**The list of witnesses examined on behalf of petitioner:**

PW.1 : Dr.H.S.Shashidhar Kumar

The list of documents exhibited on behalf of the petitioner:-

Ex.P1 : Certified copy of order sheet
Ex.P2 : Certified copy of judgment
passed in OS.No.209/2022
Ex.P3 & 4 : Certified copy of sale deeds
Ex.P4 : Certified copy of sale deed
Ex.P6 : Deputy Commissioner court
document
Ex.P7 : Copy of WP.No.799/2017
Ex.P8 : Mutation
Ex.P9 to 42: RTC extracts
Ex.P43 : Form No.15
Ex.P44 : Certified copy of plaint
Ex.P45 : Certified copy of interim
application
Ex.P46 : Certified copy of deposition,
Ex.P47 : Certified copy of summons for
OS.No.209/2022

The list of witnesses examined on behalf of respondents:-

- NIL -

The list of documents exhibited on behalf of respondent:

- NIL -

Sr. Civil Judge & JMFC.,
Shidlaghatta

