

IN THE COURT OF SENIOR CIVIL JUDGE AND J.M.F.C
GUNDLUPET

4th February 2025

Present

Sri.Basavaraj Talawar B.A., L.L.B.,
Senior Civil Judge and J.M.F.C.
RA No.19/2024

Appellant	Mahalingappa and other (Sri.P.S.G., Advocate)	
<i>Versus</i>		
Respondent	Shivamma and others (Sri.G.R., Advocate)	
<u>ORDER ON I.A. No.I</u>		
Applicant/Appellant	Mahalingappa	
<i>Versus</i>		
Opponent/Respondent	Shivamma	
Provision under which the application is filed		Under Section 5 of Limitation Act
Relief sought for		Delay Condonation
The date on which the application is filed		12.002.2024
Number of the application		IA No.I
The date on which the objection is filed by different opponents		09.07.2024
The date on which the orders were passed on the said application		04.02.2025

ORDER ON IA No.I FILED U/SEC 5 OF LIMITATION ACT

The appellants have filed the instant I.A. No.I under Section 5 of Limitation Act, for condonation of delay to file the present appeal against the respondents.

2.In the accompanying affidavit the appellants submitted that, the plaintiffs/respondents have filed the suit against the present appellants for the relief of partition and separate possession. The trial court has passed the decree of partition on 14.06.2023, in the said judgment the trial court has allotted the 1/5th share in the suit schedule properties. Thereafter, the plaintiffs have filed the final decree proceedings, bearing No.27/2023. The appellants have not able to file the appeal within limitation, as the appellant No.2 was having health issues, due to that reason they are not able to reach out to the counsel and file the appeal within limitation. If the application is allowed no harm or loss will be caused to the other side. If the application is rejection they will be put to untold hardship. Hence prays for allow the application.

3.After issuance of notice to the respondents, the respondents appeared through counsel and filed objection to the application.

4.The respondents have filed the objection to the application, in the application they have submitted that the

application filed by the appellants is not maintainable either under law or on facts, hence deserved to be dismissed. There is delay of 210 days in filing the appeal. The respondents have filed final decree proceedings before the trial court and obtained the final decree from the court on 29.06.2024. The trial court has appointed the court commissioner and as per the report submitted by the commissioner the respondents have taken the possession of their respective shares. The appellant has not given any proper explanation, the appellants have not properly explained the delay in filing the appeal. If the application is allowed the respondents will be put to hardship and injustice. Therefore, the respondents pray that the Hon'ble Court be pleased to dismiss the I.A filed by the appellants with cost in the interest of justice and equity.

5.This court has conducted the inquiry on IA No.1. The appellant has examined as AW1, no documents are marked. The respondents' counsel cross examined, the AW1, the respondent No.1 examined as RW1, copy of the final decree passed in FDP No.27/2023 is marked as Ex.R1.

6. Heard the argument of the appellants' counsel and respondents' counsel. Perused the entire material on record, the following points are arises for my consideration:

1. Whether the appellants' have made out sufficient grounds to condone the delay in filing the appeal?
2. What order?

7. My answer to the above points:

Point no.1 In the Affirmative

Point no.2 As per the final order for the following:

REASONS

8. **Point no.1:** On perusal of the order sheet and the trial court records, the appellants have preferred this appeal against the judgment and decree passed in OS No.94/2020. The suit is filed for relief of partition and separate possession. The trial court has passed judgment on 14.06.2023 by allotting 1/5th share in the suit schedule properties. Feeling aggrieved by the said judgment and decree the appellants have preferred this appeal on

16.03.2024, along with the application for section 5 of Limitation Act, to condone the delay in filing the appeal.

9.The respondent filed objection to the application and submitted that the appeal filed after 210 days. The respondents have obtained the final decree as per the report submitted by the court commissioner in FDP No.27/2023 on 29.06.2024. Hence prays to dismiss the application with cost.

10.The appellants submitted that, the plaintiffs have filed the suit for partition and separate possession bearing OS no.94/2020, the trial court decreed the suit by allotting the shares in the suit schedule properties. The trial court has held that the suit schedule properties are ancestral and joint family properties. But the appellants have taken a contention that the suit schedule properties are partitioned on 06.12.1999, the respondents have sold the properties fell to their shares. Hence they have preferred this appeal. Thereafter, due to ill-health of the appellant No.2 they were not able to reach out to counsel to file the appeal.

11.In order to prove the case appellant No.1 examined as AW1, and reiterated the entire application averments. The

respondents' counsel cross examined, in the cross examination he deposed that he has not submitted any documentary evidence to show that the appellant No.2 was suffering from illness. Further admitted that he was aware that the trial court has decreed the suit.

12.On perusal of the evidence of the AW1 it is forthcoming that appellants have not able to file the appeal with the limitation due to the ill-health of the appellant No.2. But they have not filed any documents. I have gone through the respondent No.1 evidence who is examined as RW1, in the examination chief she reiterated the objection averments and also produced the copy of the final decree passed in FDP No.27/2023 which is marked as Ex.R1. On perusal of the said document, it is forthcoming that the trial court has passed the final decree on 29.06.2024.

13.The appellate court, in exercising its discretion to condone the delay in filing the appeal, acknowledges that this discretion must be used with caution, especially when the delay is attributed to ill health. It is recognized that without medical or documentary evidence to substantiate the claim of illness, the

court may not typically be inclined to condone the delay. However, in cases where the delay is due to genuine reasons, the court may consider the matter on humanitarian grounds. In this regard I would like to rely on the decision of the Hon'ble Supreme Court in *Ramlal v. Rewa Coalfields Ltd. (1962) 2 SCR 762*, the Supreme Court held that a liberal approach should be adopted while considering whether to condone the delay. The Court specifically noted that in instances of ill health, the delay may indeed be genuine, but it must be substantiated with adequate evidence. In the present case, after careful consideration of the facts and circumstances, the delay is condoned on humanitarian grounds. Hence the application is deserves to be allowed. However, as there is delay of three months the application is deserves to be allowed on cost. **Accordingly, I answer to the above point no.1 in Affirmative.**

14.Point no.2: As per the aforesaid discussion, I proceed to pass the following:

ORDER

IA No.1 filed by the applicant/appellants under Section 5 of Limitation Act, is hereby allowed on cost of Rs.2,000/-. In the result delay in filing the appeal is condoned.

(Dictated to the Stenographer directly on the computer, typed by him and corrected by me and then pronounced in the open Court on this 4th day of February 2025)

(Basavaraj Talawar)
Senior Civil Judge & JMFC.,
Gundlupet

ANNEXURE

Witness examined on behalf of Appellant/Applicant:

AW1 : Mahalingappa

Documents marked by the Appellant/Applicant: Nil

Witness examined on behalf of Respondents/Opponents:

RW1 : Shivamma

Documents marked by the Respondents/Opponents:

Ex.R1: Decree passed in FDP No.27/2023

(Basavaraj Talawar)
Senior Civil Judge & JMFC.,
Gundlupet