

KADG210007082024



Presented on : 12-11-2024
Registered on : 12-11-2024
Decided on : 16-06-2026
Duration : 1 years, 7 months, 4 days

**IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C.
AT: CHANNAGIRI**

Present:
Soubhagya.B.Bhusher
B.A.,LL.M
Senior Civil Judge & J.M.F.C.,
Channagiri

DATED; THIS THE 16th DAY OF JUNE 2026

R.A.NO.88/2024

**APPELLANTS/
DEFENDANTS**

1. Siddappa S/o Kenchappa, Age: 70 years,
Occ: Agricultuirst, R/o: Kanchiganal,
Ubrani Hobli, Tq: Channaigir, Dist:
Davanagere.
Addl. Address Dasikatte, Ramagiri Hobli,
Tq: Holkere, Dist: Chitradurga.
2. Rangappa S/o Krishnappa, Age: 55 years,
Occ: Agriculturist, R/o: Kanchiganal,
Ubrani Hobli, Tq: Channagiri, Dist:
Davanagere.

(By Sri.K.G.Shivananda.,Adv.,)

V/s

**RESPONDENT/
PLAINTIFF**

C.Somashekharappa S/o Late
Chandrappa, Age: 68 years, Occ:
Agriculturist, R/o: Kanchiganal, Ubrani
Hobli, Tq: Channagiri, Dist: Davanagere.

(By Sri.M.Thippeswamy.,Adv.,)

1.	Date & Nature of decree appealed against.	Judgment and decree passed in O.S.No.93/2019 on 05.12.2023 on the file of Pri. Civil Judge & J.M.F.C., Channagiri.		
2.	Date of Institution of the appeal.	12.11.2024		
3.	Date of Judgment.	16.06.2026		
4.	Duration of the Appeal.	Year	Month	Days
		01	07	04

(Soubhagya.B.Bhusher)
Senior Civil Judge & J.M.F.C.,
Channagiri

JUDGMENT

The present appeal is preferred by the appellants/defendants under order 41 Rule 1 of C.P.C., against the respondent/plaintiff praying to set aside the impugned judgment and decree passed in O.S.No.93/2019 dated: 05.12.2023 on the

file of Prl. Civil Judge & J.M.F.C., Channagiri by decree the suit of the plaintiff and prays to dismiss the suit and if this court deems it necessary than remand the case for fresh disposal to the trial court.

2. The appellants were the defendants and the respondent was the plaintiff before the trial court. Thus, they are referred to by the same rank, in this case.

3. The summary of the suit, that was filed by the plaintiff against the defendants for the relief of permanent injunction. The plaintiff has described the suit schedule property as it is comprised in khata No.164, Khanesumari/property No.40/B, measuring East-West 8 yards (24 feet), North-South 16 yards (48 feet), which includes part of the newly built house, approximately measuring East-West:12 feet, North-South:45 feet, situated at Kanchiganalu Village, within the limits of Kanchiganalu Grama Panchayath, Tq: Channagiri. The suit schedule property is described in schedule of the plaint. Further the plaintiff claimed that the suit schedule property was purchased by him from one K.Rudrappa S/o Egati Siddappa through a registered sale deed dated: 24.09.1976. The said vendor of the plaintiff was purchased the property from one Kenchappa S/o Krishnappa through a registered sale deed dated: 16.09.1974. The said Kenchappa S/o Krishnappa is none other than the father of the defendant No.1. The plaintiff is also having ancestral old house on the Western side of suit schedule property, which is comprised under K.No.101/23, khata No.325. Further

asserted that he did construction of new house in the year 2013 by dismantling old dilapidated house, situated in K.No.101/2023, khata No.325. For that purpose he utilized about an area measuring 12 feet East-West, 45 feet North-South and while doing so he utilized some of the portion belonging to suit schedule property. The plaintiff has provided the hand sketch map and wherein he has shown the ABCD portion and according to him it is ancestral property. He has shown the property at CDEF is the suit schedule property and GHAF is disputed property, which is part and parcel of property purchased under a registered sale deed dated: 24.09.1976. The erstwhile owner of suit property had sold out the entire extent belonging to him and had not retained any property on either side of the suit property. The defendant No.1 at the instigation of the defendant No.2, who is the real trouble maker, created illegal 'E' records in relation to suit schedule property allegedly mentioning K.No.40/A in the name of the defendant No.1. In that connection, the Panchayath officials have also joined their hands. Further the father of the defendant No.1 had not retained any property after parting the title of suit property to the plaintiff as per the sale deeds dated: 24.09.1976 and 16.09.1974. The alleged K.No.40/A is absolutely imaginary one and is not in existence.

4. It is further averred that the defendants on the guise of created records came to suit property on 11.05.2019 at about 09.00 a.m., and employed the JCB machine. By that course, the

defendants dug the suit schedule property and tried to damage the well of the village also. The request of the plaintiff yield nothing and per contra, the defendants abused the plaintiff in a filthy language, tried to assault physically and also threatened that they will lodge a complaint against the plaintiff under the prevision of Atrocity Act to the persons belonging to Schedule Caste and Schedule Tribes. The alleged act of the defendants endanger to the foundation of newly built house of the plaintiff. The plaintiff has lodged police complaint on 11.05.2019 before the Sub-Inspector, Channagiri and no action was initiated so far. The plaintiff further alleged that by taking undue advantage of helplessness of the plaintiff, the defendants enhanced their illegal act of interference on 13.05.2019 and are in hurry to lay foundation without obtaining any license from the competent authority. The plaintiff is also helpless to get the 'E' records created by the defendants in association with the Panchayath officials, somehow he had got the xerox copy of some of the documents. According to him, the cause of action accrued to file the suit on 11.05.2019. Therefore, the plaintiff has constrained to file this suit.

5. In the trial court the defendants have appeared and contest the suit. In the written statement the defendants denied each and every averments made in the plaint and also denied the cause of action as is asserted by the plaintiff. The defendants specific legal stand is that the suit is not maintainable for the relief of bare injunction without adding the relief of declaration. Further it

is the specific contention of the defendants that the plaintiff is having an intention to cause obstruction to the construction work of the defendant No.2 file this false suit. The defendant No.2 laid foundation a few months ago and he intended to start further construction work at that time the plaintiff along-with their men belongs to their community caused interference to the possession of the defendant's vacant property. Even, the plaintiff approached the Grama Panchayath and influenced the P.D.O to stop the work of the defendant No.2. The plaintiff had also influenced the P.D.O. of Grama Panchayath to lodge a criminal case against the defendant No.2. It is further case of the defendants is that the defendant No.1 has property bearing K.No.40/A, measuring East-West: 16½ gaja, North-South: 21½ gaja, it is bearing E-swathu No.151200100800120068 and is bounded by East: House of Chandrappa, West: Road and House of Talavara Hanumappa, North: Panchayathi Road, South: House of Hanumappa. The defendant No.1 is in enjoyment of the same and it is within the knowledge of the plaintiff.

6. Further contended that the defendant No.2 also has ancestral property at Kanchiganalu village under K.No.41/A, measuring 29X43 feet. The same is under the ownership, possession of the defendant No.2's family and the khata of the said property is standing in the name of Smt.Rathnamma W/o Rangappa. The said property is exclusive property of the defendant No.2's family. The said Ratnamma had filed the suit in

O.S.No.32/2016 before the Prl. Civil Judge, Channagiri against one Parasappa and the same came to be decreed in terms of compromise between the parties on 18.04.2018. Subsequently, the defendant No.2 started construction work in the said vacant property and at that time the plaintiff and their men with an ill-motive obstructed and interfered in the said construction work. The plaintiff has also tried to damage the well of the village and also started to dig in the suit schedule property. The plaintiff has not approached the court with clean hands and has filed this false suit with a view to gulp the properties of the defendants. The suit is liable to be dismissed for non-joinder of necessary parties. Thus, the defendants prayed to dismiss the suit with cost.

7. On the basis of the said pleadings the trial court had framed 4 issues. The plaintiff examined himself as PW.1 and 10 documents were marked at Ex.P.1 to 10. The plaintiff had also examined one more witness as PW.2. Per contra, the defendant No.1 and 2 examined themselves as DW.1 and 2 and 09 documents were marked at Ex.D.1 to 9. Thereafter the trial court heard arguments on both the sides and decreed the suit by the judgment and decree dated: 05.12.2023. Being aggrieved by the same, the appellants/defendants have preferred this appeal. The main grounds of appeal are that the trial court not at all considered the primary evidence on record which are exhibited in the case and only considered the secondary evidence. The appellant at liberty to amend the plaint and lead additional evidence if required.

Looking to the any angle the trial court erred in dismissing the suit. The judgment and decree is not just and proper and interference of this court is necessary. Hence, he prays to allow the appeal.

8. Along with the appeal I.A No.1 was also filed under section 5 of Limitation Act seeking condone the delay of 341 days in filing the appeal.

9. Further the appellants have also filed I.A No.2 under order 41 Rule 27 R/w section 151 of C.P.C., seeking permission to produced the additional evidence. This application is accompanied with the sworn affidavit of the appellant No.1, wherein he has stated that he has producing additional documents. Those documents are not in his custody at the time of leading evidence at lower court. Further to enable him to mark those documents and if necessary to amend the written statement additional evidence is necessary. Therefore, he prays to permit them to produced those documents. Hence, he prays to allow the application.

10. After service of notice of appeal, the respondent appeared through counsel. The trial court records were called for. After receiving Trial court records, I have heard the arguments on both sides and perused trial court records. The following points that arise for my consideration;

1. Whether the appellants have made out sufficient cause for condoning the delay in filling this appeal?

2. Whether the appellants have shown sufficient cause to allow I.A No.2 filed under order 41 Rule 27 R/w Section 151 of C.P.C., for production of additional documents?

3. Whether the judgment and decree passed by the trial court suffers from illegality which has caused miscarriage of justice, hence the interference of this court is required for setting aside the judgment and decree of the trial court?

4. What order or direction?

11. On careful re-evaluation of the pleadings, evidence and on hearing the learned counsels for the appellants and the respondent, my findings on the above points are as under:

Point No.1: In the Negative.

Point No.2: In the Negative.

Point No.3: Does not survive for consideration.

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

:REASONS:

12. POINT NO.1 AND 2: These points are taken together for common discussion to avoid repetition. I.A No.1 and 2 are pending consideration. As I.A No.1 is under section 5 of Limitation Act and as I.A No.2 is under order 41 Rule 27 R/w section 151 of C.P.C., both I.A No.1 and 2 and merits of the case were heard simultaneously. During arguments both the sides canvassed detail

arguments on delay condonation, production of documents as well as merits of the case.

13. Since I.A No.1 is to be first allowed and only then the merits of the appeal can be looked, this court is of the opinion that without touching on the merits, condonation of delay is to be considered at first.

14. On perusal of documents it is clear that the judgment and decree was passed by trial court on 05.12.2023. The O.S No.93/2019 was decreed. In the appeal memo appellants have no reasons assigned whatsoever.

15. On perusal of the I.A No.1 and also 2 absolutely no reasons are assigned. Even the affidavit accompanying the I.A.No.1 does not disclose the date of judgment and decree nor has shown any reason however fanciful or lame excuse may be. The only pleading is that the court has discretion and the delay may be condoned. Even the I.A No.1 is cleverly worded as “delay if any” may be condoned. Thus it appears that the appellants is not fair enough to disclose the date of judgment and decree nor is fair enough to putforth valid reasons to condone the delay. It appears that there is no fair pleadings.

16. Further absolutely no reasons are shown in the I.A.No.2 as to why the documents are being filed belatedly. Merely because

there is discretion it cannot be exercised in a routine manner unless it is absolutely warranted.

17. The appellants were the defendants in the original suit and all along they were represented by a counsel and why they did not file those documents at the trial court is not at all explained. Further the documents produced by the appellants are public documents which could have been obtained and produced in the trial court itself. The appellants have not stated why they have not produced those documents before the trial court. Thus there are absolutely no reasons assigned and no grounds to invoke discretion. No evidence is let to show why there was delay.

18. During the argument urging on the alleged grounds of appeal as already discussed the learned counsel for the appellants contended that the appellants have very good case, so he prayed for condonation of delay and decision on merits.

19. In the instant case there is an inordinate delay of 341 days in filing the appeal and absolutely no reasons are assigned. In the recent past deviating from the liberal approach of condoning the delay, as it was misused by the dishonest litigants, the Hon'ble Supreme Court in order to avoid further dis-reputing of our judicial system, has taken tough stand and it did not like to condone the delay of 114 days in filing the appeal.

20. The litigants have to be more cautious in protecting their so called rights by moving the courts at an appropriate time. The delay cannot be condoned in a routine manner as obviously it takes away the valuable right of the opposite party, which has ensured to him/her due to lapse time.

21. In the decision reported at **AIR 2011 SC 1237 (Union of India & Ors V/s Nripen Sarma)** as could be seen from the judgment Union Government itself was the appellant even then Hon'ble Court did not like to condone the delay. Likewise in the one more decision reported at **AIR 2010 SC 3043 (Balwant Singh (Dead) V/s Jagadish Singh & Ors.)**, the Hon'ble Supreme Court declined to condone the delay holding that "liberal approach" does not mean doing injustice to opposite party. Similarly in **ILR 2008 KAR 2559 (Honnurappa V/s R.Masthan)** seized with a case like this wherein the revision petitioner has adduced only bald evidence without supporting any document, the Hon'ble Court declined to condone the delay. If delay is condoned in a routine manner just for the sake of making an application, there will be no end of litigation. It is strange that this matter is being fought from 2019, so no party to the proceeding can be permitted to abuse the process of law any further. Wherefore I have no hesitation to hold that appellants have miserably failed to prove the existence of sufficient cause to condone the delay, in filing appeal and also to produce documents at this appellate stage. Accordingly, point No.1 and 2 are answered in the Negative.

22. POINT NO.3 AND 4: As point No.1 and 2 are answered in the negative, point No.3 does not survive for consideration. Accordingly as point No.1 and 2 are answered against the appellants, I further hold that appeal stands dismissed resultantly. In the result, I make the following:

ORDER

I.A No.1 filed under section 5 of Limitation Act and I.A No.2 filed under order 41 Rule 27 R/w section 151 of C.P.C., by the appellants/defendants are hereby dismissed.

The appeal filed by the appellants/defendants under order 41 Rule 1 of C.P.C., is hereby dismissed with costs throughout as barred by time.

Office is directed to draw decree accordingly.

The office is hereby directed to send back the trial court records along-with the copy of judgment and decree.

(Directly dictated on computer script to typist, typed by her, corrected by me, signed and then pronounced in open court on 16th day of June 2026)

(Soubhagya.B.Bhusher)
Senior Civil Judge & J.M.F.C.,
Channagiri