

**IN THE COURT OF THE PRL DISTRICT AND SESSIONS
JUDGE, DHARWAD.**

Dated this the 17th day of February 2020.

Present:

**SHRI. ESHAPPA K BHUTE, B.A.LL.B., (Spl),
PRL. DISTRICT AND SESSIONS JUDGE, DHARWAD.**

REGULAR APPEAL No.169/2018

- Appellant/s
1. Nabisab S/o Husensab Dodamani, Age: 71 yeas, Occ: Agriculture, R/o Bogenagarakoppa Village, Tq: Kalaghatagi, Dist: Dharwad.
 2. Smt. Nabevva W/o Sharif Mishtrikoti, Age: 58 years, Occ: Household wife, R/o Yalival village, Tq: Kundagol, Dist: Dharwad.
 3. Smt. Peeravva W/o Davalasab Neelagund, Age: 73 years, Occ: Household wife, R/o Sanshi, Tq : Kundagol, Dist: Dharwad.
 4. Smt. Biyavva W/o Davalsab Unakal, aGe: 53 years, Occ: Househodl wife, R/o Unakal, Tq: Hubballi, Dist: Dharwad.
 5. Smt. Aminavva W/o Karimsab Amargol, Age: 51 years, Occ: Household wife, R/o Sutagatti, Tq: Hubballi, Dist: Dharwad.
 6. Smt. Mannabi W/o Allasab Hubballi, Age: 35 years, Occ: Household wife, R/o Chabbi, Tq: Hubballi, Dist: Dharwad.

7. Mabubsab S/o Buddesab Dodamani, Age: 53 years, Occ: Agriculture, R/o Bogenagarkoppa, Tq: Kalaghatagi, Dist: Dharwad.
8. Smt. Khairunabi W/o Imamsab Ayatti, Age: 41 years, Occ: Household wife, R/o Basaveshwar Nagar, Ganjigatti, Tq: Kalaghatagi, Dist: Dharwad.
9. Smt. Rajabi W/o Lalsab Dodamani, Age: 78 years, Occ: Household wife, R/o Bogenagarkoppa, Tq: Kalaghatagi, Dist: Dharwad.
10. Nabisab S/o Lalsab Dodamani, Age: 53 years, Occ: Agriculture, R/o Bogenagarkoppa, Tq: Kalaghatagi, Dist: Dharwad.
11. Moulasab S/o Lalsab Dodamani, Age: 43 years, Occ: Agriculture, R/o Bogenagarkoppa, Tq: Kalaghatagi, Dist: Dharwad.
12. Mabusab S/o Lalsab Dodamani, Age: 41 years, Occ: Agriculture, R/o Bogenagarkoppa, Tq: Kalaghatagi, Dist: Dharwad.
13. Ladsab S/o Lalsab Dodamani, Age: 30 years, Occ: Agriculture, R/o Bogenagarkoppa, Tq: Kalaghatagi, Dist: Dharwad.
14. Basahasab S/o Lalsab Dodamani, Age: 27 years, Occ: Agriculture, R/o Bogenagarkoppa, Tq: Kalaghatagi, Dist: Dharwad.
15. Kashimsab S/o Lalsab Dodamani, Age:

24 years, Occ: Agriculture, R/o Bogenagarkoppa, Tq: Kalaghatagi, Dist: Dharwad.

16. Smt. Fatima W/o Navabsab Nadaf, Age: 48 years, Occ: Household wife, R/o Chabbi, Tq: Hubballi, Dist: Dharwad.

17. Smt. Bibijan W/o Mahammadsab Yaraguppi, Age: 38 years, Occ: Household wife, R/o Adargunchi, Tq: Hubballi, Dist: Dharwad.

(By Sri. M.A.Pathan- advocate)

V/S

- Respondents
1. Ladsab S/o Peersab Dodamani, Age: 60 years, Occ: Agriculture, R/o Bogenagarkoppa, Tq: Kalaghatagi, Dist: Dharwad.
 2. Nabisab S/o Peersab Dodamani, Age: 59 years, Occ: Agriculture, R/o Bogenagarkoppa, Tq: Kalaghatagi, Dist: Dharwad.
 3. Rajesab S/o Peersab Dodamani, Age: 57 years, Occ: Agriculture, R/o Bogenagarkoppa, Tq: Kalaghatagi, Dist: Dharwad.
 4. Moulasab S/o Peersab Dodamani, Age: 56 years, Occ: Agriculture, R/o Bogenagarkoppa, Tq: Kalaghatagi, Dist: Dharwad.
 5. Smt. Allabi W/o Husensab Sanshi, Age: 63 years, Occ: Household work, R/o

Karadikoppa, Tq: Kalaghatagi, Dist: Dharwad.

6. Smt. Mabubi W/o Moulasab Mishrikoti, Age: 61 years, Occ: Household work, R/o Bogenagarkoppa, Tq: Kalaghatagi, Dist: Dharwad.
7. Imamsab S/o Nabisab Dodamani, Age: 73 years, Occ: Agriculture, R/o Bogenagarkoppa, Tq: Kalaghatagi, Dist: Dharwad.
8. Allasab S/o Nabisab Dodamani since deceased by his LRs.
9. Smt. Bibijan W/o Allasab Dodamani, Age: 58 years, Occ: Household work, R/o Bogenagarkoppa, Tq: Kalaghatagi, Dist: Dharwad.
10. Saidusab S/o Allasab Dodamani, Age: 43 years, Occ: Agriculture, R/o Bogenagarkoppa, Tq: Kalaghatagi, Dist: Dharwad.
11. Makabulsab S/o Allasab Dodamani, Age: 33 years, Occ: Agriculture, R/o Bogenagarkoppa, Tq: Kalaghatagi, Dist: Dharwad.
12. Nabisab S/o Allasab Dodamani, Age: 20 years, Occ: Agriculture, R/o Bogenagarkoppa, Tq: Kalaghatagi, Dist: Dharwad.
13. Smt. Pyarijan W/o Nabisab Neelagund, Age: 31 years, Occ: Household work, R/o Bogenagarkoppa, Tq: Kalaghatagi, Dist: Dharwad.

14. Smt. Shainajabi W/o Makabulsab Agasimani, Age: 38 years, Occ: Household work, R/o Chabbi, Tq: Hubballi, Dist: Dharwad.
15. Smt. Shakilabanu W/o Nabisab Shirakol, Age: 25 years, Occ: Household work, R/o Mantur, Tq: Hubballi, Dist: Dharwad.
16. Ladsab S/o Nabisab Shirakol, Age: 69 years, Occ: Agriculture, R/o Bogenagarkoppa, Tq: Kalaghatagi, Dist: Dharwad.
17. Smt. Husanavva W/o Rayesab Kamadolli, aGe: Major, Occ: Household work, R/o Bogenagarkoppa, Tq: Kalaghatagi, Dist: Dharwad.
18. Smt. Saidavva W/o Ramajansab Hulkoppa, Age: 43 years, Occ: Household work, R/o Bogenagarkoppa, Tq: Kalaghatagi, Dist: Dharwad.
19. Saidusab S/o Rajesab Dodamani, Age: 73 years, Occ: Agriculture, R/o Bogenagarkoppa, Tq: Kalaghatagi, Dist: Dharwad.
20. Smt. Shamshad W/o Moulasab Dodamani, Age: 48 years, Occ: Household work, R/o Bogenagarkoppa, Tq: Kalaghatagi, Dist: Dharwad.
21. Rajesab S/o Moulasab Dodamani, Age: 24 year,s Occ: Student, R/o Bogenagarkoppa, Tq: Kalaghatagi, Dist: Dharwad.
22. Paraveen S/o Moulasab Dodamani,

Age: 21 years, Occ: Student, R/o Bogenagarkoppa, Tq: Kalaghatagi, Dist: Dharwad.

23. Husensab S/o Rajesab Dodamani, aGe: 58 years, Occ: Agriculture, R/o Bogenagarkoppa, Tq: Kalaghatagi, Dist: Dharwad.
24. Fakrusab S/o Rajesab Dodamani, Age: 48 years, Occ: Agriculture, R/o Bogenagarkoppa, Tq: Kalaghatagi, Dist: Dharwad.
25. Ladsab S/o Rajesab Dodamani, Age: 41 years, Occ: Agriculture, R/o Bogenagarkoppa, Tq: Kalaghatagi, Dist: Dharwad.
26. Smt. Imambi W/o Mahammadsab Nadaf, Age: 53 years, Occ: Household work, R/o Nekar Nagar, Tq: Hubballi, Dist: Dharwad.
27. Smt. Nabevva W/o Moulasab Nadaf, Age: 43 years, Occ: Household work, R/o Kadapatti Haliyal, Tq: Hubballi, Dist: Dharwad.
28. Smt. Ramajavva W/o Mabusab Doddamani, Age: 41 years, Occ: Household work, R/o Pashupatihal, Tq: Kundagol, Dist: Dharwad.
29. Smt. Jaitunabi W/o Kashimasab Bihar, Age: 39 years, Occ: Household work, R/o Nekar Nagar, Tq: Hubballi, Dist: Dharwad.
30. Smt. Bibijan W/o Sharifsab Nadaf, Age: 25 years, Occ: Household work,

R/o Bogenagarkoppa, Tq: Kalaghatagi,
Dist: Dharwad.

*(R-1 to 6 by Sri. C.R.Hiremath-advocate,
R-19, 23 to 30 by Sri. I.I.Shaikh-advocate,
R-8 dead, R-7, 9 to 18, 20 to 22 absent)*

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Date of filing of the appeal before this Court.	26.10.2018
Nature of appeal	Against the judgment and decree dated 12.06.2017 in O.S. No.263/2015 passed by the learned Senior Civil Judge & JMFC Kalaghatagi.
Date of judgment	18.02.2020 and in view of the advancement application filed by Sri. VNP advocate for appellants it is advanced on 17.2.2020 and pronounced the order and judgment.
Total duration	01 Year, 03 Months, 22 Days

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J U D G M E N T

1. Aggrieved by the impugned judgment and decree dated 12.06.2017 of dismissal of their suit filed for the relief of partition in respect of suit properties by the learned Senior Civil Judge and JMFC Court, Kalaghatagi (herein after referred to as learned trial Court) in O.S. No.263/2015, the Plaintiffs therein have challenged the same by filing the appeal under Section 96 R/w Order 41, Rule 1 and 2 of C.P.C. on various grounds and on perusal of the materials on record, case of the plaintiffs can be summarized here as under.

2. The ten landed properties shown in the plaint are the suit properties and plaintiffs have filed the suit for the relief of partition of their share with the defendants in the suit properties, inter-alia stating that the suit properties were belongs to one Imamsab Dodamani who is the common ancestor of the Plaintiffs and defendants and after his death one Peersab Dodamani, elder son of late Imamsab has filed an application before the Land Grant Committee and on enquiry, by the order dated 7.12.1978 the suit properties were granted in the name of Peersab Dodamani on behalf of entire family and each one of the plaintiffs and defendants have got their specified right and share in the same. It is further alleged that after the death of late Peersab, in collusion with Revenue Officials, the defendants No.1 to 6 have got mutated their names in the suit properties and they have made an attempt to alienate the same without notice of the plaintiffs and such of their attempt is a high handed act and the request made by the Plaintiffs for making partition and

to give their legal share in the suit properties has been turned down by the defendants, therefore they have been forced to file a suit at O.S. No.263/2015 before the learned trial Court for the relief of partition.

3. In response to the Court summons, defendants No.1 to 4 have appeared before the trial Court through their advocates. Among them defendant No.1 has filed written statement and other defendants by filing their memo have adopted the same as their written statement and on perusal of the same, defence of the defendants is one of total denial of the Plaintiffs' case. They have denied the right and share of these Plaintiffs to claim the relief of partition in the suit properties with the defendants. They have asserted that their father late Peersab was alone cultivating the suit properties on his own right and accordingly he has applied for granting of the same and the Land Grant Committee on holding enquiry has passed an order granting the suit properties in his favour and such of the grant was on his behalf alone. The Plaintiffs have

no right or interest in the suit properties and there was no cause of action to them to file the present suit. Thus, they have prayed to pass an order for dismissal of the suit.

4. On the basis of the pleadings of both side, the learned trial Court has framed the following issues.

- 1) *Whether the plaintiffs prove that the schedule properties were granted for and on behalf of the family consisting of Plaintiffs and defendants?*
- 2) *Whether the Plaintiffs prove that they and the defendants are in joint possession and cultivation of the schedule properties?*
- 3) *Whether the plaintiffs prove that they are having the share in the schedule properties, if so to what extent?*
- 4) *Whether the Plaintiffs are entitled for the reliefs claimed in the suit?*
- 5) *What order or decree?*

5. To prove their case, plaintiffs have relied on the oral evidence of P.W.1 to P.W.3 besides marking of 22 documents as per Ex.P.1 to P.22. On the other hand, the defendants have relied on the oral evidence of D.W.1 to D.W.3 and they have got marked 4 documents as per Ex.D.1 to D.4.
6. On hearing arguments of both sides by way of impugned judgment and decree, the learned trial Court has dismissed the suit with costs. Accordingly, decree was drawn.
7. Aggrieved by the impugned judgment and decree the Plaintiffs therein have challenged the same by filing this appeal inter-alia disputing the correctness and legality of the findings recorded by the learned trial Court in the impugned judgment. The appellants have urged that the learned trial Court has not properly appreciated the oral and documentary evidence available on record, it has not framed the proper issues and its findings are based on assumptions and presumptions, therefore all the findings recorded by

the learned trial Court in the impugned judgment are illegal, erroneous and not tenable in the eye of law. On these among other grounds appellants have prayed to allow the appeal and to set aside the impugned judgment and decree and to award their respective shares by decreeing their suit. Hence, the appeal.

8. Along with appeal memo appellants have filed I.A. No.1 under Section 5 of Limitation Act R/w Section 151 of C.P.C. inter-alia stating that there is delay of 471 days in preferring this appeal. They have stated that their previous advocate has misguided them by stating that there is connected dispute before the Assistant Commissioner, Dharwad and after disposal of the said appeal, the appellants herein have to challenge the impugned judgment and decree of O.S. No.263/2015 and by believing his words they have kept quiet, therefore delay of 471 days is caused. According to the appellants, delay was not either intentional or deliberate one but the same was beyond their control and they have made out a case to condone the delay.

Thus, they have prayed to allow I.A. No.1 and to condone the delay of 471 days and admit the appeal for main hearing.

9. Respondents No.1 to 6 have filed their objection to I.A. No.1 inter-alia denying the allegations made therein as false and created one. The appellants were parties before the trial Court in O.S. No.263/2015 and they being the parties were supposed to challenge the impugned judgment if they are aggrieved, but they have slept over the matter for more than one year, therefore they are not entitled for any leniency. They have stated that there are no just or good grounds to condone the delay. Accordingly, they have prayed to pass an order for dismissal of I.A. No.1 as well as appeal itself.
10. Heard the arguments of both sides and perused the records.
11. Now the following points arise for the consideration of this Court.

1. Whether the applicants/appellants have shown a sufficient cause for the delay of 471 days in preferring this appeal against the impugned judgment and decree dated 12.6.2017 passed by the learned trial Court in O.S. No.263/2015?
2. Do they further prove that findings recorded by the learned trial Court in the impugned judgment are perverse, illegal one and same are liable to be set aside by this Court sitting in appeal?
3. Whether the appellants are entitled for the reliefs as prayed?
4. What order or decree?

12. The findings of this Court on the above points are as under:

Point No.1 : In the negative

Point No.2 : Does not survive for consideration

Point No.3 : In the negative

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

REASONS

13. **Point No.1:-** The impugned judgment and decree in O.S. No.263/2015 was passed by the learned trial Court on 12.6.2017 and the present appeal has been filed by the appellants on 25.10.2018. It would go to show that there is delay of more than 471 days in preferring this appeal against the impugned judgment and decree. It is settled position of law that in case of delay, the appellants/applicants have to show a sufficient cause for each day's delay in preferring the appeal.
14. By filing their objections to I.A. No.1 respondents No.1 to 6 have denied and disputed the bonafides of applicants/appellants in not preferring the appeal within time. When the other side have disputed the bonafides of the applicants/appellants, in my opinion they have to show before this Court that they have been prevented from good and sufficient cause in not preferring the appeal in time. Further they have to show before this Court that there were good and

sufficient cause for them in not filing the appeal in time. In the case on hand there is delay of 471 days in preferring this appeal and same would go to show that there is more than 1 year, 3-4 months delay in filing the appeal. Such of the long delay can be termed as abnormal delay. In such a situation the applicants/appellants have to show before this Court that they were prevented from filing the appeal in time.

15. Admittedly the applicants/appellants have not adduced any oral evidence in support of their I.A. No.1. Further they have not produced any documents to show that they have been prevented from challenging the impugned judgment within time or within reasonable time. In the case on hand except self serving statement made in the affidavit of I.A. No.1, the applicants/appellants have not produced any iota of evidence, therefore in the absence of any such materials, mere allegations made in the affidavit of

I.A. No.1 are not sufficient to accept the say of the applicants/appellants.

16. Applicant Nabisab of I.A. No.1 has stated that their previous advocate has advised them not to prefer appeal till the disposal of the proceedings before the Assistant Commissioner. They have not produced any materials to accept their say on that aspect. In the absence of any such materials, bald say of the applicant of I.A. No.1 in that regard cannot be agreed with.
17. Applicants/appellants were the Plaintiffs before the learned trial Court and they being the parties to the proceedings ought to have challenged the impugned judgment and decree within time, but for the reasons best known to them they did not do so and they have slept over the matter for about 471 days and such of the abnormal delay has not been properly explained by the applicants. For the aforesaid reasons in the absence of any acceptable explanation, allegations made in the affidavit of Nabisab accompanying to I.A.

No.1 are not sufficient to condone the long delay.

Accordingly, I answer point No.1 in the negative.

18. **POINTS No.2 and 3**: As the appellants have not preferred the appeal in time, their contention in the main appeal cannot be considered as does not survive for consideration. While answering point No.1, this Court has not condoned the delay, therefore, the appeal on merit cannot be gone into by this Court. For the aforesaid reasons, I.A. No.1 as well as the main appeal are liable to be dismissed. Thus, I answer point No.2 as does not survive for consideration and point No.3 in the negative.

19. **Point No.4**. On the basis of the observation of the Court on points No.1 to 3, I.A. No.1 as well as appeal are liable to be dismissed. Accordingly, the following order is passed:

ORDER

I.A. No.1 filed under Section 5 of Limitation Act R/w Section 151 of C.P.C. to condone the delay of 471 days is hereby dismissed by

directing the parties to bear their respective costs.

Consequently the appeal filed under Section 96 R/w Order 41 Rule 1 and 2 of C.P.C. is hereby dismissed.

Office to return the trial Court records to the learned Trial Court with copy of this order for information.

(Dictated to the Stenographer, transcript corrected and then pronounced by me in the open-Court on this the 17th day of February 2020).

**(ESHAPPA K BHUTE),
PRL. DIST. & SESSIONS JUDGE,
DHARWAD.**
