

**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,
SEDAM**

PRESENT: SRI. VIJAYKUMAR.S. JATLA

Senior Civil Judge & JMFC., Sedam B.Sc., LL.B.

DATED THIS THE 13st DAY OF DECEMBER-2022.

R.A.No.20/2019

Appellants : Tippamma and others.

Versus

Respondents : Anandkumar and another

**Orders on I.A.No-I U/Sec. 5 of limitation Act, filed by
Appellants**

This is an interlocutory application filed by the Appellants for condonation of delay of 247 days in preferring this appeal.

2. Advocate for appellants contended that the respondents have filed the suit for partition and separate possession against the appellants before the trial court in OS No.132/2016 and said suit was decreed on 4.12.2018 and the appellants have not filed the appeal challenging the above said judgment and decree within the period of limitation as their father deceased Bhimshappa being manager of their family was looking after entire family affairs had took their signature on a paper without informing them regarding pendency of the suit and himself had looked after the suit until his death, they are unaware of the pendency of the suit, when the

respondent NO.2 came to them and sought for her share in the suit properties presenting the judgment and decree then they came to know about the suit and obtained the certified copy of judgment and decree and they being the unaware of the law and its consequences and lack of legal knowledge they have not preferred the appeal immediately after obtaining the certified copy, therefore the non filing of the appeal within period of limitation is not intentional one and as stated above reasons. The suit is involved immovable property if the delay of 247 days is not condoned, the appellants will be put to greater loss which cannot be compensated in terms of money. Hence, sought for allowing IA No.I as prayed for.

3. The advocate for the respondents filed objection to IA N.I contended that the respondents filed suit for partition and separate possession in O.S.No.132/2016 before the trial court and decreed on 4.12.2018. In the said case the appellants are defendants were appeared through advocate and deliberately have not filed the written statement. During pendency of the case, the defendants executed the gift deed. Against the same dispute case was before the Tahasildar Sedam are appeared through advocate and allowed. Against the Tahasildar Sedam order filed an appeal before the Assistant Commissioner, at Sedam was pending. The appellants are with full knowledge of the case since from Civil Judge Sedam to FDP

pending before the Civil Judge, Sedam. The appellants are stating the false and imaginary facts in the affidavits to get the delay condonation in filing the appeal on false grounds and false fact. The appellants not given any reasonable ground for the delay condonation before the court and are not explained the valid reason for condonation of delay, hence the petition be dismiss. The respondents are filed the FDP No.3/2019 before the Civil Judge, Sedam is pending. The appellants not to give the share to the respondents because respondent No.1 is minor and respondent No.2 is widow and late Vasantkumar. Therefore, the appellants by hook and crook by false facts wants to condone the delay. Hence, sought for rejection of IA No.I.

4. In support of I.A.No.I, the appellant No.3 has examined himself as PW.1 and not got marked any document. The respondents have not lead any oral or documentary evidence.

5. On the basis of the above pleadings and on hearing both side, the following points arise for my consideration.

- 1) Whether the appellants have made out grounds to allow I.A.No. I U/s.5 of Limitation Act for condoning delay of 247 in preferring this appeal?
- 2) What order?

6. 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

7. **Point No.1:-** The case of the appellants and respondents is as discussed above.

8. Advocate for appellants contended that there is delay of 247 days in filing the appeal. As the appellants were not having knowledge of legal aspects and due to un-avoidable circumstances not filed the appeal in time. Further contended that the delay in filing the application is not intentional one and if the application is not allowed by condoning the delay appellants will put greater hardship and no harm will cause to the respondents. Hence, sought for allowing the I.A No.1.

9. In support of the I.A No.1 appellants examined appellant No.3 as PW-1 and he reiterated the petition averments in his chief examination. In the cross examination PW.1 admitted that the suit of plaintiffs was decreed on 4.12.2018 and he was present in that suit. PW.1 admitted that they were present when they have filed objection about the gift deed before Tahasildar Office. PW.1 admitted that the appeal was preferred before Assistant

Commissioner, Sedam in respect of gift deed which is still pending. PW.1 denied the fact that he knows about the judgment. PW.1 denied the fact that there is no any cogent reason to condone the delay in preferring the appeal. PW.1 admitted that he has not appeared in FDP No.3/2019. Even though the respondents have filed objections but have not lead any oral evidence to disprove the case of the appellants regarding the delay of 247 days in preferring the appeal.

10. On perusal of the I.A No.I and evidence on record it reveals that admittedly there is delay of 247 days in filing the appeal. From the affidavit of appellants it is clear that due to unavoidable circumstances and they are no legal knowledge appellants have not preferred the appeal immediately after obtaining the certified copy of the judgment and decree and the said delay is not intentional one for the above said reasons. The evidence on record discloses the fact that the appellants appeared in other proceedings before the Tahasildar and Assistant Commissioner, Sedam. This shows that the appellants are aware of the judgment and decree. Admittedly there is delay of 247 days in preferring the appeal. The appellants made out sufficient cause for condoning the delay of 247 days in preferring this appeal. If the I.A No. I is not allowed appellants will deprived of putting forth the case properly and it will leads to

multiplicity of the proceedings. If the I.A No.I is allowed it will help for proper adjudication of the dispute between the parties in appeal. The appellants made out the valid and reasonable grounds to allow I.A.No.I as prayed for. In the light of above reasons **I answer Point No.1 in the Affirmative.**

11. Point No.2:- As I have answered point No. 1 in the Affirmative for the foregoing reasons, I proceed to pass the following:

ORDER

I.A.No-I, U/Sec.5 of limitation Act filed by the appellants is hereby allowed with no cost.

Further delay of 247 days in preferring this appeal is hereby condoned.

(Dictated to the Stenographer directly on computer and corrected, signed and then pronounced by me, in the open Court on this the **13th day of December-2022**, at Sedam)

**Senior Civil Judge & JMFC,
Sedam.**