

**IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE AT
KOLAR.**

Dated this the 6th day of July 2015

Present:

**SRI.RAJENDRA BADAMIKAR, B.Sc. LL.B., (Spl)
PRINCIPAL DISTRICT JUDGE, KOLAR.**

M.A. No. 18/2013

Appellants:

- 1) Sahadevappa, S/o late Muniyappa, 42 years,
- 2) M.Lakshminarayana, S/o late T.Muniyappa, 46 Yrs,
- 3) Muniyamma, W/o late Savana Doddappa, 54 Yrs,
- 4) Lakshmaiah, S/o late Savana Doddappa, 54 Yrs,
- 5) Ramappa, W/o late Savana Doddappa, 48 Yrs,
- 6) Perumalappa, S/o late Savana Doddappa, 45 Yrs,
- 7) Narayanappa, S/o late Savana Doddappa, 43 Yrs,
- 8) Nagaraja, S/o late Savana Doddappa, 41 Yrs,
- 9) Narayanappa, S/o late Munivenkatappa
@ Abbaiah, 55 Yrs,
- 10) Venkataswamy S/o late Munivenkatappa,
@ Abbaiah, 45 Yrs,

All are R/o Hasandahalli Village, Masthi Hobli,
Malur Taluk.

(Represented by Sri.**G.C.H.**, Advocate)

Vs.

Respondents:

- 1) Yellappa, S/o late Venkatagiriappa, 70 Yrs,
- 2) Venkateshappa, S/o Yellappa, 46 Yrs,
- 3) Beerappa, S/o Yellappa, 46 Yrs,
- 4) Abbaiah, S/o Yellappa, 35 Yrs,

All are R/at Hasandahalli village, Masthi Hobli,
Malur Taluk.

- 5) The Tahsildar, Malur Taluk, Malur

Orders on I.A.No.1

This application is filed by the appellants under section 5 of Limitation Act for condonation of delay in filing this appeal.

2. In the affidavit it is contended that, the lands bearing Sy.No.23 and 25 situated at Hasandahalli village where Neeraganti inam lands are attached to inam office and the said lands were sold to the father of appellants. It is alleged that, after coming into the force of Village Offices Abolition Act, the same lands were vested with the Government and the father of first respondent who sold the said lands by suppressing the material facts has applied for regrant and without knowledge of the appellants and without notice, the land has been regranted. It is also contended that, neither the father of respondent No.1 nor his sons have tried to take possession of the said lands. It is also contended that, when there was obstruction in the peaceful possession and enjoyment on 29.02.2012 they got knowledge regarding regrant behind their back and hence, it is alleged that, they are constrained to challenge the said order of regrant dated 26.02.1988. Hence, it is contended that, as they were not the parties to the original regrant order and no notice was issued to them, there is delay and from the date of knowledge there is no delay as they immediately obtained certified copies and filed this appeal and hence sought for condonation of delay. Hence, this I.A.No.1.

3. The respondents have filed objections denying the allegations and assertions made thereunder:

It is contended that, the appellants have not disclosed the actual period of delay and they are required to explain each day's delay. It is also contended that, respondent No.1 is in possession and enjoyment of disputed lands bearing Sy.No.21 and 25 along with Sy.No.28 which are Neeraganti inamti lands and were regranted in the name of father of respondent No.1 Venkatagiriappa. It is contended that, after regrant, the respondent No.1 and his father were all along in possession and hence, the respondents have disputed the claim and sought for rejection of the application.

4. The first appellant is examined as PW1 and he has placed reliance on 9 documents. He was cross-examined by the respondents and respondents did not choose to lead any evidence.

5. Heard the arguments advanced and perused the records.

6. Now, the following point would arise for my consideration:

Whether the appellants have shown sufficient cause for condonation of delay in filing this appeal?

7. My finding on the above point is in the **AFFIRMATIVE** for the following:

REASONS

8. At the outset, it is to be noted here that, the appellants have challenged the order passed by the Tahsildar Malur in INA CR No.148/1978-79 dated 26.07.1988. It is an admitted fact that, the disputed lands bearing Sy.No.23 and 25 have been regranted in the name of Baravardar Venaktagiriyappa who is the father of respondent No.1. It is the specific allegation of petitioners that, these sale deeds were executed in the year 1971 and 1972 as well as 1963. These original sale deeds and mortgage deeds are produced before this court by the appellants for perusal. On perusal of these documents, it is evident that, the father of respondent No.1 and respondent No.1 together sold these lands in favour of father of appellants under sale deeds of 1971-72. Further, it is evident that, the original mortgage deed was also executed in 1963. Apart from that, it is also important to note here that, the respondent No.1 claims to be a fostered son of deceased original baravardar Venkatagiriyappa. Though he is treated as fostered son, he cannot become legal heir in this regard. Even in the sale deed there is reference that, the present respondent No.1 is a fostered so. Admittedly, no Will is executed in his name and on such circumstances when he cannot claim as Class-I heir or testamentary heir of deceased Venkatarigiyappa, the question of he inheriting the property does not arise at all.

9. Apart from that, the sale deeds are registered documents and mortgage is also a registered document. The original baravardar did not disclose this mortgage and some of the sale deeds. But, the order of Tahsildar itself clearly disclose that, the regrant holder Venkatagiriappa has sold 10 guntas out of Sy.No.23 to the father of appellants Nos. 3 to 8. But, though there was a reference regarding the sale deeds and though there is reference of mortgage and other aspects, he did not choose to issue any notice to the purchasers for the best reasons known to him. There is no evidence of notice has been issued to him. The order of learned Tahsildar itself discloses that, he had knowledge and the same has been admitted by the father of respondent, but he did not issued notice and thereby the appellants have been denied an opportunity in this regard. Under these circumstances, when the appellants were not given any notice and when they does not have any information regarding regrant, the limitation does not come in their way as they were not served with any notice. Hence, they are entitled to challenge this order. Further, no dispute is there regarding alienation and respondents in their objections did not dispute allegations. Under such circumstances the delay is not fatal as the father of appellants were not issued with notice before regrating in the name of father of respondent No.1. As such the delay in filing this appeal is properly

explained by the appellants and delay needs to be condoned. The sale deeds were not denied by the counsel for respondents and these aspects disclose that, the present appellants were not having any knowledge. Under such circumstances, I.A.no.1 needs to be allowed by condoning the delay of around 30 years in filing this appeal. Accordingly, the point under consideration is answered in the affirmative and I proceed to pass the following:

ORDER

I.A.No.1 is allowed. The delay in filing this appeal is condoned and the appeal is admitted for hearing on merits.

Dictated to the Judgment-writer, transcribed and computerized by him, corrected and then signed by me on this the 6th day of July 2015.

(RAJENDRA BADAMIKAR)
PRINCIPAL DISTRICT JUDGE, KOLAR.

ANNEXURE:

List of witnesses examined and documents marked on behalf of the appellant:

PW1	:	Sahadevappa
Ex.P1	:	Orders made by Tahsildar
Ex.P2	:	Application for regrant
Ex.P3	:	Copy of RTC extracts
Ex.P4 & 5	:	Original sale deeds
Ex.P6	:	Mortgage deed
Ex.P7 & 8	:	Sale deeds
Ex.P9	:	Encumbrance certificate.

List of witnesses examined and documents marked on behalf of the respondents: NIL.

PRINCIPAL DISTRICT JUDGE, KOLAR.

Mm/-*