

**IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE AND
J.M.F.C., AT PANDAVAPURA**

Dated this the 30th day of June-2026

PRESENT

SRI. R.MAHESHA, B.A.L, LL.B.,
Prl. Senior Civil Judge and JMFC,
Pandavapura

R.A.No.22/2025

APPELLANT : Meenakshi
W/o Late Lokesha,
Aged about 44 years,
R/o Kerethonnuru Village,
Kasaba Hobli,
Pandavapura Taluk.

(By Sri.S.T.N., Advocate)

V/s

RESPONDENTS : 1) Sowmya
D/o Srinivasa,
Aged about 25 years.

2) Kodandarama
S/o Srinivasa,
Aged about 23 year.

3) Boramma
W/o Late Alooregowda,
Aged about 78 years.
(Respondent No.3 LR's are already on
record)

4) Susheelamma
D/o Late Alooregowda,
Aged about 59 years,
R/o Byatarayanakoppalu Village,
Chinakurali Hobli,
Pandavapura Taluk,
Mandya District.

5) Puttamadegowda
S/o Late Alooregowda,
58 years.

6) Sakamma
W/o Late Alooregowda,
Aged about 75 years.

(Respondent No.6 LRs are already on record)

7) Sarojamma
D/o Late Alooregowda,
S/o Naganna,
Aged about 58 years,
Near Mahakaleshwari Temple,
Shanthinagara,
Pandavapura Town and Taluk.

8) Vasanthamma
D/o Late Alooregowda,
W/o Ravi,
Aged about 55 years,
Near Sai Mandira,
Shanthinagara,
Pandavapura Town.

9) Gowramma
W/o Late Srinivasa,
Aged about 45 years,
Kerethonnuru Village,
Kasaba Hobli,

Pandavapura Taluk.

- 10) Sowbhagyamma
W/o Late Narayana,
Aged about 38 years,
Shanthinagara,
Pandavapura Town.
- 11) Ramegowda
S/o Late Chikkegowda,
Aged about 73 years,
T.S.Chathra Village,
Kasaba Hobli,
Pandavapura Taluk.

Respondents No.1 to 3, 5 and 6 are
R/o Kerethonnuru Village,
Kasaba Hobli,
Pandavapura Taluk,
Mandya District.

(Rep. By Sri.K.S.M., Advocate for respondent No.1 and 2, Sri.S.N.M., Advocate for respondent No.11. Respondent No.4, 5, 7, 8 and 10 – ex-Parte. Respondent No.3 to 6 - Dead)

PARTIES IN I.A.No.I

Applicant : Meenakshmi ... Appellant

V/s

Opponent : Sowmya and others ... Respondents

**ORDER ON APPLICATION FILED UNDER SECTION 41 RULE 3(2) AND
SECTION 5 OF LIMITATION
ACT**

This application is filed by the appellant, seeking to condone the delay of 5 years 23 years in filing the appeal in the interest of justice and equity.

2. In the accompanying affidavit to I.A., the appellant has stated that, the respondents by colluding with each other furnished wrong address, due to which summons was not served on her. Respondents also inserted the self-acquired properties of herself in the suit and obtained decree wrongfully from the Court. Respondents after obtaining decree, they have filed F.D.P.No.6/2018, wherein, again wrong address of petitioner is given. Later, she made an application through her Counsel and obtained certified copies of judgment and decree. On 08.01.2025 she obtained the said certified copies of judgment and decree and she would have filed appeal on or before 08.02.2025. but, due to delay in obtaining revenue documents with respect to suit in O.S.No.33/1999 and other revenue courts, now she filed the present appeal. If delay is considered from the date of her obtaining judgment and decree copies, it would be 40 days delay. But, if it is calculated from the date of passing of judgment i.e., on 11.06.2018, there is delay of 6 years and 324 days in filing appeal. As per Hon'ble Supreme Court order of relaxation due to COVID-19 i.e., there will be 5 years 23 days delay in preferring appeal. The delay caused in preferring appeal is bonafide one not an intentional. If the application is allowed no hardship is caused to the other side and if it is not allowed, she will put to great hardship and it cannot be compensated in terms of money and it

would be difficult to meet the ends of justice. Hence, prayed to allow the I.A.

3. On the other hand, respondent No.1 and 2 have filed objection to this I.A. contending that, the application filed by the appellant is not maintainable either in law or on facts. The averments made in the affidavit are false and the same is created by the petitioner and even though several opportunities were granted by the trial court, but she has not contested the matter either in suit at O.S.No.364/2012 or F.D.P.6/2018. Petitioner intentionally not received the summons issued to her. Petitioner had knowledge of proceedings of both said suit and F.D.P., she filed the present appeal after the lapse of 7 years. The appellant has created and concocted averments in the affidavit, without giving proper and cogent reasons for the delay in filing the present appeal. Further, the appeal itself is not maintainable so also the application. As such, the application is time barred. The appellant has not filed the application with bonafide reasons and contest the matter in accordance with law, thus she is debarred from seeking condonation of the same. The application is not bonafide one and the same is with intent to harass the respondents No.1 and 2 and to dodge the proceedings. Hence, the application is liable to be rejected in limine. Therefore the respondent No.1 and 2 prayed to dismiss the application with exemplary costs, in the interest of justice and equity.

4. In order to prove the affidavit averments of I.A.No.I u/s. 5 of Limitation Act, the appellant herself entered into witness box and reiterated her affidavit averments in her chief-examination and produced Ex.P1 and

Ex.P2. On the other hand, the respondents not led any evidence either oral or documentary.

5. Heard both side. The Trial Court records already received on 25.06.2026. Perused the materials placed on record.

6. Accordingly, the following points do arise for the consideration of this Court;

- 1) Whether the appellant has established sufficient cause for not preferring the appeal within time and for condoning such delay?

2. What order?

7. The findings of this Court to the aforesaid points for consideration are as under:-

Point No.1 : In the Negative,

Point No.2 : As per the final order for the following;

REASONS

8. **Point No.1**:- Admittedly, this appeal is filed by the defendant No.7 in O.S.No.364/2012 against the plaintiffs seeking to set-aside impugned judgment and decree passed by trial court dated 11.06.2018 and allot her half share in suit schedule properties. The said appeal accompanied with I.A.No.1 u/s. 5 of Limitation Act and sought for condonation of delay of 5 years, 23 days in preferring present appeal. The reasons stated by appellant is that, due to not serving of summons issued by this Court to her and delay in obtaining revenue documents, she could not possible to

prefer appeal well in time. Therefore sought for condone delay and permit her to contest the appeal on merits in accordance with law.

9. To prove the side of appellant, the appellant entered into witness box and got examined by oath as PW1 and filed sworn affidavit of examination in chief and the averments in affidavit to I.A. is reiterated. To substantiate her grounds for condonation of delay, Ex.P1 and Ex.P2 are produced. On perusal of documents placed by appellant, it indicates that, Ex.P1 certified copy of Judgment and Decree in O.S.No.364/2012 and Ex.P2 original Aadhar Card of appellant.

10. As per the say of the appellant, respondent No.1 and 2 have colluded with each other, defendants and they got decree in O.S.No.364/2012. Though they knew about appellant was resided at Kerethonnuru Village, Pandavapura Taluk. They intentionally shown residential address of appellant as Shanthinagara, Pandavapura Town, Pandavapura Taluk. On perusal of Trial Court order sheet and record it clearly indicates that plaintiff No.1 and 2 by name Sowmya and Kodandarama have filed O.S.No.364/2012 against defendant No.1 to 10 for partition, separate possession, mesne profit, other consequential reliefs in respect of suit schedule properties on 15.12.2012. The present appellant herein was defendant No.7 in the said suit. The address of defendant No.7 mentioned in original plaint as **defendant No.7, Smt.Meenakshi W/o Late Lokesha, 38 years, residing at Shanthinagara, Pandavapura Town, Pandavapura Tauk, Mandya District**. Learned plaintiff Counsel taken steps for the same address. The said process of summons issued against

defendant No.7 returned with endorsement on 02.02.2013. The endorsement returned by the process server is herewith extracted below;
“7 ನೇ ಪ್ರತಿವಾದಿ ಸದರಿ ವಿಳಾಸದಲ್ಲಿ ವಾಸವಿಲ್ಲದ ಕಾರಣ ಜಾರಿ ಆಗದೇ ವಾಪಸ್”. Further it is relevant to note that, this process of summons issued against defendant No.7 by Trial Court found in Trial Court record at page 28. Further it can be seen from order sheet that, learned plaintiff Counsel taken steps against defendant No.3 and 7 through RPAD on 07.11.2013. The said summons issued through RPAD by Trial Court and returned with endorsement personally served on defendant No.7. Defendant No.7 remained absent before Trial Court. Hence, she was placed *ex parte* by Trial Court on 10.01.2014. Further it can be seen from Trial Court record that, Postal Acknowledgment Card available at page 32 of Trial Court record. She herself taken suit summons through RPAD. Further it is relevant to note that, as per Postal Receipt found in Trial Court record at page 31, consignment No.RK557240072IN, suit summons sent from the office of Civil Judge and JMFC., Pandavapura on 18.12.2013. Package weighed 15 grams and was addressed to one Meenakshi, Thonnuru. Further it is relevant to note that, since 10.01.2014 till 11.06.2018, proceedings carried out by Trial Court. Finally, Trial Court pronounced its judgment on 10.06.2018. Further it is relevant to note that, one **Sunil S/o Puttamadegowda, 28 years, residing at Kerethonnuru Village, Kasaba Hobli, Pandavapura Taluk, Mandya District** has filed appeal and challenged the correctness and genuinity of judgment and decree before Addl. Senior Civil Judge and JMFC., Pandavapura on 29.06.2022, which is numbered as R.A.No.43/2022. He was third party and not party in O.S.No.364/2012. After contest, R.A.No.43/2022 dismissed with cost and confirmed Trial Court impugned judgment and decree on 25.02.2025.

Further it is relevant to note that, one ***Sakamma and others have filed appeal and challenged correctness and genuineness of impugned judgment and decree passed by Trial Court in O.S.No.364/2012 before Addl. Senior Civil Judge and JMFC., Pandavapura, which is numbered as R.A.No.13/2023.*** After contest, the said appeal dismissed with cost of Rs.1,000/- on 07.11.2023. It is relevant to note that, judgment was passed by Trial Court on 11.06.2018. Decree was signed on 26.06.2018. Defendant No.7 applied for certified copies on 08.01.2025. Copies given to appellant on 10.01.2025. Appeal was preferred by appellant on 02.05.2025. As per say of appellant, respondent No.1 and 2 and other defendants colluded with each other and obtained decree in their favour (respondent No.1 and 2). They have sent notice in F.D.P.No.6/2018. There is delay of 6 years, 324 days and exclude period COVID-19. The delay in presenting appeal 5 years, 23 days. ***It is relevant to note and refer decision of Hon'ble Apex Court, in suo motu writ petition (Civil) No.3/2020 in Re:Cognizance For Extension Of Limitation, Hon'ble Apex Court issued directions; 1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021. 2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply. 3. The period***

from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within the court or tribunal can condone delay) and termination of proceeding.

11. The Government of India shall amend the guidelines for containment zones, to state. "Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements." So as per Apex Court directions, in computing the period of limitation for any suit appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded in cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event, the actual balance period of limitation remaining, with effect from 15.03.2021 is greater than 90 days. That longer period shall apply. In the instant case, facts are analysed in the above background, from 15.03.2020 till 14.03.2021 shall stand exclude. Certified copy obtained by appellant counsel on 10.01.2025. The present appeal filed on 02.05.2025. So as per Apex Court directions from 14.03.2021 exclude 90 days i.e., 14.06.2021. From

14.06.2021 limitation would commenced to file appeal by appellant/defendant No.7. So as per calculation, there is a delay of 5 years 23 days from preferring appeal by appellant/defendant No.7. ***Further it is relevant to refer and relied recent decision of Hon'ble High Court of Karnataka in case between Sri.Narayanappa and others V/s Sri.Erappa and another, in regular second appeal No.1110/2021 (Dec/INJ) decided on 16.06.2025 Single Bench, Hon'ble High Court of Karnataka held in this case that, "each day of delay in filing an appeal must be satisfactorily explained. Mere citing reasons such as family tragedies or pandemic without adequate justification for prolonged inaction is insufficient to condone a significant delay in filing an appeal."*** This court being guided by Supra principle of law laid down by the Hon'ble High Court of Karnataka and perused present case facts, it indicates that, the reasons assigned in the application and objections filed by respondent it disclosed that the impugned judgment was passed by trial court on 10.06.2018. The present appeal is filed on 02.05.2025. Almost 5 years 23 days delayed. The reasons assigned in the affidavit that, due to Covid pandemic and plaintiff have mentioned residential address of appellant/defendant No.7 as Shanthinagara, Pandvapura Town, Pandavapura Taluk, but appellant/defendant No.7 never resided in the said address. She permanent resident of Kerethonnuru Village, Kasaba Hobli, Pandavapura Taluk, Mandya District. Suit summons not yet served on defendant No.7/appellant. Therefore, it could not possible to appear before Trial Court. She came to know about judgment and decree passed by Trial Court in O.S.No.364/2012, when Surveyor came near land for measurement. Therefore, she could not has knowledge about the judgment passed by trial court. There was no explanation for the delay in

filing the appeal even after she came to know about judgment and decree passed by Trial Court. Further it indicates from Ex.P2, she was the permanent resident of Kerethonnuru Village, Kasaba Hobli, Pandavapura Taluk, Mandya District. Ex.P2 issued on 17.04.2012. Suit summons issued by Trial Court personally served on defendant No.7 as per Postal Acknowledgment Card found at page 32 of Trial Court record. Further it indicates from Trial Court order sheet that, on 10.01.2014, case called before Trial Court. Defendant No.7 remained absent before Court. Therefore, Trial Court ordered defendant No.7 palced exparte. Since 10.01.2014 till pronouncement of final judgment by Trial Court i.e., on 11.06.2018, defendant No.7/appellant not yet opted to appear before Trial Court. After lapse of more than 6 years (***exclude period from 15.03.2020 till 14.03.2021, 90 days from 15.03.2021 excluded***). The appellant/defendant No.7 had full aware of proceedings initiated against her by respondent No.1 and 2/plaintiff before court of Civil Judge & JMFC, Pandavapura in O.S.No.364/2012. The reasons stated by appellant/defendant No.7 is not a ground to condone delay of 1848 days in filing the appeal. Unless each day delay is explained and sufficient cause is shown to condone the delay. The question of condoning delay in filing the appeal does not arise. Further it is relevant to note that, learned Counsel for appellant has produced memo along two documents during course of his arguments, xerox copy of Judgment and Decree passed by Civil Judge (Jr.Dn.), Pandavapura in O.S.No.33/1999 and xerox copy of Agreement/ಒಪ್ಪಿಗೆ ಕರಾರು ಪತ್ರ dated 24.03.2004. Perused the same. The said documents are not produced before Trial Court as exhibits or it is not a part of documents before Trial Court. It is not a proper to comment on said documents. In the present case on hand, there is a delay in filing appeal

1848 days as per the say of appellant he was not aware about pronouncement of judgment by trial court due to non-receive of suit summons. Therefore, as per facts and circumstances of the case and above discussions, this court is of the considered opinion that, the appellant has utterly failed to establish sufficient cause for not preferring the appeal within time and for condoning such delay. For the reasons stated above this I.A. is liable to be dismissed with costs payable to the Taluk Legal Services Authority, Pandavapura and to the respondent No.1 and 2. **Accordingly, this court answered point No.1 in the Negative.**

12. **Point No.2:-** For the forgoing above reasons and as per negative findings on point No.1, this court finds that I.A.No.I filed by the appellant is liable to be dismissed with costs and accordingly, proceeds to pass the following;

ORDER

I.A.No.I filed by the appellant/defendant No.7 under Section 5 of Limitation Act, is hereby dismissed with costs.

The appellant is hereby directed to pay Rs.2,500/- to the Taluk Legal Services Authority, Pandavapura and Rs.2,500/- to the respondent No.1 and 2 equally. Resultantly, appeal filed by the appellant/defendant No.7 under Order XLI Rule 1 r/w Section 96 of CPC is hereby dismissed as barred by law of limitation.

Draw decree accordingly.

The office is hereby directed to send back
Trial Court Records along with a copy of this
order.

(Directly dictated to Stenographer through online, the same is corrected and then
signed and pronounced by me in the open court on **30th day of June-2026**)

(R.MAHESHA)
Prl. Senior Civil Judge and
J.M.F.C., Pandavapura.

ANNEXURE

List of witnesses examined for petitioner:-

PW1 : Meenakshi.

List of documents exhibited for petitioner:-

Ex.P1 : C/c of Judgment and Decree in O.S.No.364/2012,

Ex.P2 : Copy of Aadhar Card of Petitioner.

List of witnesses examined for the respondents:-

NIL

List of documents exhibited for the respondents:-

NIL

(R.MAHESHA)
Prl. Senior Civil Judge and
J.M.F.C., Pandavapura.
