

KAMD700001352022



**IN THE COURT OF THE
III ADDITIONAL DISTRICT AND
SESSIONS JUDGE, MANDYA,
[SITTING AT SRIRANGAPATNA].**

Dated this the 14th day of July, 2026.

PRESENT

Smt. Jyothsna D, LLB, LLM, DFA.

III Addl. District and Sessions Judge, Mandya,
[Sitting at Srirangapatna].

R.A./5010/2022

Appellant : Maohar Shetty S/o Narayana
Shetty, Aged about 50 years,
Residing at D.No.861, 13th Main
Road, 3rd Block, Koramangala,
Bengaluru.

By Sri KSS, Advocate.

-Vs-

Respondents: 1. M.S.Ravindra S/o M.S.Srinivasa,
Aged about 37 years.

2. M.S.Sowmya D/o M.S.Srinivasa,
Aged about 36 years.

3. M.S.Chandan S/o M.S.Srinivasa,
Aged about 33 years.

All are residents of Majjigepura,
Belagola Hobli, Srirangapatna
Taluk.

By Sri SNS, Advocate for R1 and 2,
R3 – KNM, Advocate.

Parties to I.A.No.I

Applicant : Manohar ShettyAppellant

V/s

Opponents : M.S.Ravindra and others ... Respondents

Orders on I.A.No.I

I.A.No.I is filed by the appellant under Order XLI Rule 3[A] r/w Section 151 CPC seeking to condone delay of 9 years 8 months in preferring the present appeal in the interest of justice and equity.

2. In the accompanying affidavit to I.A., it is stated that he has preferred the appeal against the Judgment and Decree passed by the Learned Principal Civil Judge [Sr.D.] and JMFC, Srirangapatna dated 05.04.2012 in O.S.No.136 of 2007. The appellant could not appear before the Trial Court as he was not keeping good health and attended

through his General Power of Attorney holder by name Mohandas Shetty. He was conducting the case on his behalf including adducing evidence before the Court and he has given instruction to the Advocate and other formalities. He was under the impression that the case is still pending and said Mohandas Shetty is attending all the issues pertaining to said case. Further, recently, he had been to the schedule property for the purpose of planning to put up a farm house there and the 1st respondent came objected for the same. On enquiry he learnt that O.S.No.135 of 2007 is already disposed of some time back and also came to know the fact that no appeal is preferred against said Judgment and Decree by said Mohandas Shetty. Thereafter, he went to contact said Mohandas Shetty to know about the current situation of the case and also to take necessary steps in that regard. Unfortunately, he came to know that said Mohandas Shetty was not alive. Further, he also came to know the fact that appeal could have been preferred as the case was fit for filing appeal. Beside the admission by PW-1 he came to know that the respondent family owns several other properties, which were not included in the suit. As such, the suit itself was not maintainable as the same was for partial

partition and also there were other good grounds for preferring appeal. Since the suit was for partial partition, which was not maintainable in law, he understood the fact that the impugned Judgment and Decree are null and void. Further, he contacted the revenue department and made enquiry about the other properties owned by the respondents' family and got some documents to show their ownership of some other properties. The respondents with malafide intention had suppressed said materials and had filed the suit only in respect of suit schedule property in order to defraud and cause loss to the appellant and also make unlawful gain for themselves. It is further submitted that deceased father of the respondents cheated the appellant by suppressing the age of the respondents at the time of sale of land and also gave him Genealogical Tree showing the respondents as minors. It is further submitted that the respondents and their father have committed offence of fraud against him, which is a serious in nature offence under law of the Country.

3. Further, the Trial Court observed said fact during the course of its Judgment which is impugned in this appeal. There cannot be any other justification to penalize or make him suffer for the offence blatantly committed by the

respondents and their father. The appellant has invested his hard earned money for purchasing the suit schedule property by paying the sale consideration amount by way of cheque, which is not disputed. Under such circumstances of the case, it is necessary to condone the delay in preferring the appeal as it is filed with bonafide intention as stated above. If this application is allowed, the same would not cause hardship to the other side and if it is rejected, the appellant would suffer great loss and injury. Hence, prayed to allow the I.A.

4. On the other hand, respondent No.1 filed objections to the application contending that the application filed by the appellant is not maintainable either in law or on facts. Hence, liable to be rejected in limine. This application is filed without invoking the mandatory provisions of Section 5 of the Limitation Act. On that ground alone, it is liable to be rejected. The Judgment passed by the Trial Court on 05.04.2012. The contents mentioned in the affidavit are not related to condonation of delay of 9 years 8 months in preferring the present appeal. Therefore, said delay is admitted by the appellant in appeal as well as in the application. There is no sufficient cause and due diligence

for conducting such a long delay as has been mentioned in the affidavit.

5. Further, the present respondents have already filed final decree proceedings before the learned Principal Senior Civil Judge at Srirangapatna in FDP No.7 of 2021, which is pending for finality. This application is not maintainable as per the reportable Judgment of the Hon'ble High Court of Karnataka in H.M.Renukaiah and Panchaksharaiah case. The appellant has not made out any prima facie ground to allow the application. Hence, prayed to reject the application.

6. The respondent No.3 has filed consolidated objection to I.A.Nos.I to III stating that the applications are not maintainable and filed with false affidavits. There is inordinate delay of 9 years 10 months in preferring the appeal and no diligent reason has been explained by the alienate in the accompanying affidavit. Further, Judgment of the Trial Court is not stayed. Hence, the application is liable to be rejected.

7. Heard. Perused the materials on record and accordingly, the following points do arise for construction of this Court;

1. Whether the appellant has made out grounds to condone the delay in preferring the appeal as prayed for in I.A.No.I?

2. What Order?

8. 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

9. **Point No.1** : Admittedly, this appeal is filed by defendant No.3 in O.S.No.135 of 2007 aggrieved by the Judgment of the Trial Court dated 05.04.2012 wherein suit filed by respondents 1 and 2 for the relief of partition and separate possession is decreed. Further, it is admitted fact that the appeal is filed after lapse of 9 years 10 months.

10. As per the materials available on record, original suit came to be disposed after full fledged trial. The appellant is represented by his power of attorney holder which is an admitted fact in the affidavit to I.A. His chief examination and cross-examination is concluded. More over, after disposal of I.A.No.IV filed under Order III Rule 2 r/w Section 151 CPC by this Court, on 25.02.2026 it is posted for enquiry on I.A.No.I. Even after sufficient opportunity enquiry on I.A.No.I is not commenced by the appellant and the same is taken as nil on 05.06.2026. It was posted finally for hearing on I.A.No.I and main. But, counsel for the appellant remained absent on this day and did not address his arguments on I.A. No.I and on main. There is default on the part of the appellant in not adducing his evidence for establishing the ground of due diligent of delay of 9 years 10 months in preferring the appeal.

11. When the appellant himself failed to establish reasons for delay, this Court is of the considered opinion that the appeal itself is barred by time. Further, original suit is disposed of after full fledged trial. Therefore, as per the facts and circumstances of the case and above discussions, the

appellant has not made out grounds to allow I.A.I. Therefore, this Court answer point No.1 in the negative.

12. **Point No.2** : In view of the reasons and discussions as has been stated herein above and the findings on point No.1 in the negative, this Court proceeds to pass the following;

ORDER

I.A.No.I filed by the appellant under Order XLI Rule 3[A] CPC is hereby dismissed.

Consequently, present appeal is dismissed as time barred.

Send back Trial Court Records along with of this order.

[Dictated to the Stenographer Grade-1 transcript revised, corrected and then pronounced by me in open Court on this the 14th day of July, 2026]

[Jyothsna D]
III Addl. District Judge,
Mandya, [Sitting at Srirangapattana].