

IN THE COURT OF THE PRINCIPAL DISTRICT AND SESSIONS JUDGE AT MYSURU

Dated this, the 21st day of August 2020

Present: Sri. RAMACHANDRA D.HUDDAR, B.Com., LL.M,
Prl.District & Sessions Judge,
Mysuru.

R.A.106/2019

Appellant : Sri.Appaji S/o late Smt.Gowramma,
Aged about 61 years,
Residing at No.177, II Cross,
Manasara Road,
Indira Nagar,
Ittigegud,
Mysuru-570010.

(By Sri. K.J.Vinu, Advocate)

//Vs//

Respondents : 1. Smt.Choodamani
W/o Sri.Vijendra Rao,
Aged about 64 years,
Residing at No.1047/39,
II Main Road, 5th Cross,
Vidyaranyaapuram, Mysuru.

2. Sri.Narayana
H/o late Smt.Vijayalakshmi,
Aged about 99 years,

3. Sri.Kullala @ Kumar
S/o late Smt.Vijayalakshmi,
Aged about 67 years,

4. Smt. Subhadra
D/o late Smt.Vijayalakshmi,
Aged about 64 years,

5. Sri. Manju
S/o late Smt. Vijayalakshmi,
Aged about 62 years,
6. Sri.Thimma
S/o late Smt.Vijayalakshmi,
Aged about 60 years,
7. Smt.Rani
D/o late Smt.Vijayalakshmi,
Aged about 58 years,
8. Sri.Ganesh
S/o late Smt.Vijayalakshmi,
Aged about 54 years,

Respondents 2 to 8 are
residing at No.3597,
Mantapada Beedi,
Veeranagere II Cross,
Mahalakshmi Devasthanada Beedi,
Ashoka Road,
Mysuru.

9. Sri.P.Shivanna
S/o late Sri.Puttadevappa,
Aged about 75 years,
Residing at No.97,
Behind Bethalamma Temple,
Bhugathagalli Village,
Varuna Hobli,
Mysuru Taluk.
10. Smt.Gayathri
W/o late Sri.Mallesh,
Aged about 64 years,
11. Sri.Raja S/o late Sri.Mallesh,
Aged about 39 years,
12. Smt.Nagarathna
D/o late Sri.Mallesh,
Aged about 44 years,

Respondents 10 to 12 are residing at No.3082, K.T.Street, Mandi Mohalla, Mysuru.

13. Sri.Chandrashekar
S/o Sri.Ningappa,
Aged about 55 years,
Residing at No.31,
Brindavan Apartments,
Akashavani Circle,
K.R.S.Road,
V.V.Mohalla,
Mysuru.
14. Sri.Ramaraju
S/o late Smt.Krishnamma,
Aged about 61 years,
15. Smt.Rajalakshmi
W/o late Sri.Sahadeva,
D/o late Smt.Krishnamma,
Aged about 59 years,
16. Smt.Gajalakshmi
W/o Sri.Krishnappa,
D/o late Smt.Krishnamma,
Aged about 57 years,
17. Sri.Jayadeva S/o late Krishnamma,
Aged about 55 years,

Respondents 14 to 17 are residing at No.3597, II Cross, Lakshmiddevammagudi Road, Veeranagere, Mysuru.

(By Sri.B.Parashiva - Adv. for R.1, R.2 & 5 - dead, Sri. M.P.Chandrakanth - Adv. for R.3, 4, 7, Sri.A.V.Jayarama Rao - Adv. for R.9, R.10 to 12 - Absent, R.13 to 15 - exparte)

Parties to I.A.No.I

**Applicant:
(Appellant)** Sri.Appaji

Vs.

**Opponents/
(Respondents):** Smt.Choodamani and others

:: ORDERS ON I.A.NO.I ::

It is an application filed by the appellant under Section 5 of Indian Limitation Act, to condone the delay of 76 days in preferring this appeal.

2. Along with this application, the appellant himself has filed an affidavit stating that, being aggrieved by the judgment and decree so passed in O.S.No.63/2010 passed by the III Additional Senior Civil Judge and C.J.M., has preferred this appeal. The appellant's suit came to be dismissed by the said court. He was informed by his counsel about the judgment. At that point of time, the appellant was not keeping well. Therefore, he could not contact his counsel to give instructions to file appeal. On 07.02.2019, he came in contact with his Advocate over telephone. He requested his Advocate to obtain the certified copy. On 15.02.2019 he was informed about the result of the suit. It is stated that, he was recovered from his ailment on 25.03.2019 and immediately contacted his counsel. There is delay of 76 days in preferring this appeal and hence as there are

bonafide reasons for delay in filing this appeal within stipulated time. It is prayed by the appellant to condone the delay.

3. This application is opposed by respondent No.9 alone. It is contended by respondent No.9 that, the application is misconceived and not tenable in the eyes of law. This delay cannot be condoned. The assertions made in the affidavit are vague and cannot be accepted. If the application is allowed, the respondent will be prejudiced. This application, lacks bonafide. Hence, it is prayed by respondent No.9 alone to dismiss the application as well as appeal.
4. As there is a delay of 76 days in this case, to prove the assertions made in I.A.I, the appellant has filed his affidavit by way of examination in chief. He was cross-examined through Video Conference. Ex.P.1, the medical certificate is marked on behalf of the appellant. Closed his evidence.
5. Respondents have not led any evidence on this application.
6. Heard the arguments. Meticulously perused the records.
7. The points that would arise for my consideration are as under:

1. Whether appellant has made out acceptable grounds to condone the delay of 76 days as prayed?

2. What Order?

8. My answer to the above points are as under:

Point No.1: In the affirmative

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

: R E A S O N S :

9. **POINT NO.1:** It is a fact admitted between both the sides that O.S.63/2010 was dismissed being filed by the appellant on 08.01.2019 by the III Additional Senior Civil Judge and C.J.M., Mysuru. This appeal was preferred by the appellant on 02.04.2019. So, as per the say of the appellant there is a delay of 76 days in preferring this appeal. The grounds so stated by the appellant for delay is that, he was not keeping well and he was suffering for Typhoid. Therefore, he could not contact his counsel. Immediately, after recovery of his ailment, he approached his counsel and filed appeal. These assertions have been made by the appellant in his evidence on oath. Except denial in the cross-examination, nothing worth is elicited. Ex.P.1 Medical Certificate shows that, this appellant was suffering from Typhoid. While marking this document no objection was raised by the respondents. Except respondent No.9, no other respondents have contested this application by filing objection statement to this application.
10. Plaintiff says that, he has filed the suit before the trial court seeking declaration and injunction against the defendants.

He asserts his right over the property in question. But, his suit came to be dismissed by the court. So far as delay is concerned, court should not be too technical in appreciating the delay. It is well settled principle of law that, when substantial justice and technical consideration for pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done on technicalities. It must be grasped that judiciary is respected not on account of its power to regulates injustice on technical grounds. But because it is capable of doing justice and is expected to do so. If this principle is applied to the present facts of this case, the appellant has preferred this appeal with a delay of 76 days. Even if it is filed in time, this appeal would not have been disposed of at an earliest point of time. It would have been kept in the cupboard of this court. So, therefore, in the considered view of this court, if the delay of 76 days is condoned, as there is a medical ground being stated by the appellant, it would meet the ends of justice. On technicality, the application cannot be dismissed. Therefore, the appellant in this case being the applicant to this application, has made out sufficient grounds to condone the delay of 76 days as prayed for. Hence, I record my findings on point No.1 in the affirmative.

11. **POINT NO.2:** Resultantly, I pass the following:

ORDER

I.A.I filed by the appellant under Section 5 of Limitation Act is allowed. Delay of 76 days so caused in filing this appeal is hereby condoned.

No order as to costs.

(Dictated to the Stenographer, transcribed by her on Computer, revised, corrected and then pronounced by me in open court on this day, the **21st day of August 2020**)

(RAMACHANDRA D. HUDDAR)

Prl. District & Sessions Judge,
Mysuru.

*Jk