

KAMS010043252021



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

Dated this the 3rd day of January, 2024

PRESENT

Smt. Prabhavathi M. Hiremath, B.A., LL.B.(Spl.),
Principal District and Sessions Judge,
Mysuru.

RA/315/2021

Appellant:

Dilip Kumar S/o Roshan Lal Gana,
Aged about 48 years, R/at No.202,
Manasara Road, Ittegegudu, now
Indiranagar, Nazarbad Mohalla,
Mysuru.

(By Sri. T.Purna Kumar, Advocate)

Vs.

Respondents:

1. Bhagya D/o Late Chikkeeregowda,
W/o M.A.Siddegowda, R/at Muthathi
Village, Kasaba Hobli, T.Narasipura
Taluk, Mysuru District.
2. Somashekar S/o Late
Chikkeeregowda, aged about 63
years, R/at Mellahally Village,
Varuna Hobli, Mysuru Taluk.

3. Ravi S/o Late Chikkeeregowda,
Aged about 51 years, R/at Door
No.205/11, 3rd Cross,
Mahadeshwara Extension,
Kumbarakoppalu, Mysuru.
4. M.C.Jayamma D/o Late
Chikkeeregowda W/o Channegowda,
Aged about 65 years, R/at Door
No.552, Lala Rajapathi Ray, 80 Feet
Road, 4th Main, 1st Cross, Sardar
Vallabai Patel Nagara, Mysuru.
5. Geetha D/o Late Chikkeeregowda
W/o D.Shivakumar, aged about 55
years, R/at Harohally Village,
Varuna Hobli, Mysuru Taluk.
6. Bharathi D/o Late Chikkeeregowda
W/o Ningegowda, aged about 47
years, R/at Bevinahalli Village,
Sosale Hobli, T.Narasipura Taluk,
Mysuru District.
7. Kamalamma W/o Late
Chikkeeregowda, aged about 80
years, R/at Mellahally Village,
Varuna Hobli, Mysuru Taluk and
District.
And also R/at House No.205/11, 3rd
Cross, Mahadeshwara Layout,
Kumbarakoppalu, Mysuru.
8. S.Prakash @ Prakash S/o Late
Sannegowda, aged about 44 years,
R/at No.47, Siddappaji Temple
Road, Mavinahalli Village, Jayapura
Hobli and Post, Mysuru Taluk.

(**R.1 by Sri. K.Boregowda, Advocate**
R.2 by Sri. C.Puttaswamy, Advocate

R.3, 6 & 7 by Sri. N.K.Mahadeva, Advocate
R.4 by Sri. O.Shama Bhat, Advocate
R.5 – Exparte
R.8 by Sri. G.M.Suresha, Advocate)

IN I.A. No.1/2021

Applicant: Dilip KumarAppellant

Vs.

Opponents: Bhagya & OthersRespondents

ORDERS ON I.A. No.1

This is an application filed under Section 5 of the Limitation Act, to condone the delay in filing the appeal.

2. In support of the application, appellant Dilip Kumar has filed affidavit stating that, he has preferred appeal challenging the judgment and decree in O.S.No.734/2006 dated 22.03.2010 and final decree passed in FDP No.26/2011 on 21.06.2019 on the file of Principal Small Causes and Senior Civil Judge, Mysuru. The appellant is the aggrieved person by the judgment and decree passed by the Trial Court with reference to item No.4 of the schedule property. He came to know when Revenue Authorities have changed the entries in favour of respondent No.8 in respect of item No.4 of the schedule property. Immediately, he approached the Revenue Authorities and obtained a copy stating that there was a decree passed by the

Trial Court in respect of the property which was purchased by him under the registered Sale Deed in the year 2006. Thereafter, he has applied for the certified copy of the judgment and decree from the Court and filed this appeal. He has got prima facie case. If delay if any is not condoned, he will be put to hardship and prayed to allow the application.

3. For that, learned Advocate for respondent No.1 has filed objections as under:

Appeal itself is not maintainable, as in one appeal, judgment and preliminary decree in O.S.No.734/2006 and final decree in FDP No.26/2011 cannot be challenged. There is a delay of 10 years 5 months in preferring the appeal. Appeal is preferred two years after dismissal of Final Decree Proceedings. The averments in the affidavit in support of application are denied and prayed to dismiss the petition.

4. Respondent No.8 has filed separate objections as under:

There is no sufficient ground to condone the delay in filing the appeal. The reasons assigned in the affidavit are not adequate to condone the delay. Appellant is not a bonafide litigant. He has filed false affidavit and prayed to reject the application.

5. Respondent No.4 has filed separate objections stating that appellant is not a party to the suit and he has purchased the suit item No.4 during pendency of the litigation. Therefore, sale is hit by principles of *lis pendense* under Section 52 of the Transfer of

Property Act and he has no *locus standi* to file appeal as independent party as an aggrieved person. He has not questioned the preliminary decree. He cannot file appeal when his vendor has not challenged the judgment. There is an inordinate delay in preferring the appeal. There is no mention about the number of days of delay caused in preferring the appeal. Each day's delay is required to be explained. There is no such explanation and prayed to dismiss the application.

6. In support of the appellant's case on the application, appellant himself examined as P.W.1 and got marked in all two documents as Exs.P.1 and P.2. Respondents have not adduced any oral evidence.

7. Heard both sides.

8. The points that arise for my consideration are as follows:

- 1. Whether appeal is maintainable, as in single appeal, preliminary decree and final decree is challenged ?**
- 2. Whether present appeal preferred by the person who is not party to the proceedings before the Trial Court, is maintainable ?**
- 3. Whether delay can be condoned ?**
- 4. What order ?**

9. For the reasons stated in the subsequent Paras, I answer the above points as follows:

Point No.1: In the **affirmative**,

Point No.2: In the **affirmative**,

Point No.3: In the **affirmative**,

Point No.4: As per final order, for the following:

REASONS

10. **Point No.1:**

From going through the Memorandum of Appeal, it is clear that, the present appeal is preferred challenging the Judgment and Decree passed by Prl. Judge, Small Causes Court and Senior Civil Judge, Mysuru in O.S. No.734/2006 dated 22.03.2010 and final decree passed in FDP No.26/2011 dated 21.06.2019.

11. Now, the question is, whether in the same appeal both preliminary decree and final decree can be challenged, is to be seen. That point was considered by the Hon'ble **Calcutta High Court** in the decision reported in **AIR 1929 Cal 689** in between ***Taleb Ali and another Vs. Abdul Aziz and others.*** From the facts of the said case, it is clear that, challenging the preliminary decree, appeal was preferred after initiating the final decree proceedings. During pendency of the appeal, final decree was passed. Their Lordships held that "***the recourse opened to the appellant is that, to amend the memorandum of appeal so as to enlarge its scope and convert it into a combined appeal against both the preliminary and the final decree***". Their Lordships have observed earlier Judgments passed by various Hon'ble High Courts and Hon'ble Apex Court and in Para No.26 and 27 held as under:

“26. In this case, however, the Court allowed the appellant to amend his memorandum of appeal so as to turn it into an appeal against both decrees. Again in Nanibala v. Ichhamoyee, the same learned Judge re-affirmed the principles that the right of appeal from interlocutory orders ceases after the disposal of the suit, and that this rule is applicable to cases in which there is a preliminary decree and a final decree distinguishing certain cases in which the appeal against the preliminary decree had been lodged before the final decree was made, he says:

It was ruled that the final decree must; be deemed a contingent decree or in the words of Turner L.J. in Shama Purshad v. Hurro Purshad [1865] 10 M.I.A. 203 a subordinate and dependent decree liable to be superseded by the modification or reversal of the preliminary-decree which was the subject matter of appeal before a superior tribunal when the final' decree was made on the basis thereof in the primary Court.

27. In this case also recourse was had to the device of amending the memorandum-of appeal so as to enlarge its scope and convert it into a combined appeal against both the preliminary and the final decree”.

12. Therefore, it cannot be said that, in one appeal, the appellant cannot challenge the preliminary decree as well as final decree. Hence, the argument advanced by the learned counsel for respondents that, the appeal itself is not maintainable, is not acceptable one. Therefore, for the above said reasons, **point No.1** is answered in the **affirmative**.

13. **Point No.2:**

Under Section 96 of the C.P.C., appeal shall lie from every decree passed by any Court exercising original jurisdiction to the

Court authorized to hear appeals from the decision of such Courts. Under Section 96 of the C.P.C., appeal by a person who was not a party to the civil suit is not maintainable when the judgment in appeal is not adverse to any party in suit. If third party wants to prefer appeal challenging the judgment and decree in a suit wherein he is not a party to the proceedings, then, he is required to make out that he has got an interest in the subject matter of the suit. The judgment and decree passed by the Trial Court is affecting his right or interest. In Section 96 of C.P.C., procedure is provided for preferring an appeal from the original decree. The said provision do not enumerate the category of persons who can file an appeal. It is a settled legal position that, a stranger cannot be permitted to file an appeal in any proceedings unless he satisfies the Court that he falls within the category of aggrieved person. It is only where a judgment and decree prejudicially affecting a person who is not party to the proceedings, he can prefer an appeal with the leave of the Appellate Court.

14. In the decision in between ***Ramchandra Singh Vs. Savitri Devi and others***, the Hon'ble Apex Court held that, ***"eventhough appellant was not a party, if his rights are affected, he can challenge the decree"***. In this case, it is the case of the appellant that, he has purchased item No.4 of the suit schedule property in the year 2006 itself and he came to know about the passing of a decree with reference to item No.4 of the suit schedule property when revenue entries are changed. After obtaining the certified copies of judgment and decree, this appeal is preferred.

15. From the Trial Court Records, it is seen that, the suit was filed on 30.06.2006. The appellant has claimed that, he has purchased the item No.4 property on 22.11.2006. Even though after filing the suit before the Trial Court he has purchased the property, it is his case that, he do not know about the pendency of the case and during the course of cross-examination of P.W.1, nothing is elicited except denial suggestion that he has got knowledge about the pendency of the suit as well as FDP proceedings. Therefore, as a purchaser of one of the schedule properties in the year 2006, he got affected by the judgment and decree passed by the Trial Court. Therefore, it cannot be said that, appellant has no *locus standi* to file appeal. Hence, **point No.2** is answered in the **affirmative**.

16. **Point No.3:**

With reference to condonation of delay, in the application, the appellant has not at all mentioned what is the period of delay in preferring the appeal. As it is the specific case of the appellant that, after knowing of the change of revenue records, immediately he has preferred appeal, the learned Advocate for appellant vehemently argued that, limitation starts for him when he came to know about the passing of the decree. From that day, it cannot be said that, there is a delay in preferring the appeal.

17. From going through the judgment and decree passed by the Trial Court, it is clear that, preliminary decree was passed in the year 2010. Therefore, appellant has preferred appeal along

with the application to condone the delay. Even though the period of delay is not mentioned in the application, in view of the fact that he has filed appeal after knowing the passing of a judgment, as he was not a party before the Trial Court, the argument advanced by learned Advocate for appellant, is acceptable one.

18. Even for a moment it is considered that there is a delay in preferring the appeal, whether it is satisfactorily explained or not, is to be seen.

19. The learned Advocate for respondents vehemently argued that, the grounds made out by the appellant are not sufficient to condone inordinate delay of 10 years 5 months. In support of his argument, he relied on the decision reported in **AIR 2014 Supreme Court 1612 in Special Leave Petition (Civil) Nos.6609-6613/2014 dated 24.03.2014 between Brijesh Kumar and others Vs. State of Hariyana and others**, wherein their Lordships have held that:

“Condonation of delay- Rejection of application for - Validity - Sufficient cause is a condition precedent for exercising discretion by Court for condoning delay- Inordinate delay of 10 years 2 months and 29 days in filing appeal- Order of High Court refusing to condone delay giving cogent and valid reasons - Is proper”.

20. In a decision reported in **2019(3) KCCR 2724** in between ***Veeramaraiah Vs. Gangaiah***, their Lordships have held that:

“Limitation Act, 1963- Section 5-Appeal-Delay of 829 days - No sufficient cause shown to condone such inordinate delay - Therefore, application as also appeal dismissed”.

21. In a decision reported in **2020(2) AKR 405** in between ***Leelavathi and others Vs. Prathima and another***, their Lordships have held that:

“Limitation Act (36 of 1963), S.5- Condonation of delay- Delay of 2197 days in filing appeal- Matrimonial proceedings - petitioners were participating in proceedings since 2014 and decree was within their knowledge- No sufficient reason made out to condone delay - Delay not liable to be condoned”.

22. In a decision reported in **2012 (4) AIR Kar R 668** in between ***Venkatamurthy V. Smt. Radhamma***, wherein their Lordships have held that:

“(B) Limitation Act (36 of 1963), S. 5 - Condonation of delay - Delay of 421 days in filing appeal - Delay not satisfactorily explained - Accused having participated in trial ought to have followed up case- He could not put blame on his Advocate that Advocate had not informed accused about progress of case- Also there being no proof with regard to accused suffering from jaundice, same could not be accepted - Rejection of application for condonation of delay, proper”.

23. In a decision reported in **AIR 2006(NOC) 709 (KANT.)** in between ***Smt. Rukminiammal and others Vs. A. Shobitha Kumar and others***, their Lordships have held that:

“Limitation Act (36 of 1963), S.5- Condonation of delay in filing appeal- Appellants/property owners claimed that they had no knowledge of suit filed by tenants for declaration, injunction and partition of said property- However, from records it was clear that appellants were duly served, represented through counsel and filed written statement - Therefore. It cannot be said that appellants were not aware of proceedings. Delay not liable to be condoned”.

24. On the contrary, the learned Advocate for appellant vehemently argued that, the **“sufficient cause”** word used in Section 5 of the Limitation Act can be construed liberally. Only on the technicalities, party cannot be thrown out from the Court. In support of his argument, he relied on the decisions reported in **2016(3) AKR 732 and 2016(4) AKR 389.**

25. In a decision reported in **2017(2) AKR 783** in between ***Bandeepa Veerabhadrapa Andure Vs. Gundamma Hanmathppa Tagare and another,*** their Lordships have held as under:

“ Limitation Act(36 of 1963), S.5 - Condonation of delay - Appeal - delay of 501 days - Sufficient cause is condition precedent for exercising direction by court for condonation delay- Non intimation of disposal of suit by Trial Court advocate to appellant sufficient cause not requiring any corroboration from very advocate to whom negligence has been cast- Delay of 501 days liable to be condoned”.

26. In a decision reported in **2002(3) SCC 195** in between ***Ram Nath Sao alias Ram Nath Sahu and others Vs. Gobardhan Sao and others,*** their Lordships have held as under:

“Sufficient cause” for setting aside abatement of suit and condonation of delay in taking steps for substitution of heirs and LRs - Liberal interpretation and balance between rights of parties, necessity of - Held, expression “sufficient cause” should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bonafides cannot be imputed to the party concerned- Whether or not sufficient cause has been furnished can be decided only on the facts of a particular case- Straitjacket formula not possible- Acceptance of explanation given should be the rule and refusal, the exception”.

27. In a decision reported in **2019(2) Kar.L.J. 801** in between ***Dhareppa Vs. Shankar (since deceased) by his LRs.***, their Lordships have held as under:

“(A) Limitation Act, 1963, Section 5- Code of Civil Procedure, 1908, Section 100 and Order XXII, Rules 3, 4 and 9 - Extension of prescribed period in certain cases- Application for condonation of delay- Burden is on the applicant to explain the delay with sufficient case. However, the moot question to be considered by the Court is, what is the standard applicable to know the “sufficient cause test”- Whether each day’s delay has to be explained with sufficient cause - Or, the delay has to be explained in a rational manner- In a catena of cases, the High Court and Supreme Court has consistently held that the Court should adopt a liberal and justice oriented approach which considering application under Section 5 of the Limitation Act”.

28. From going through the above said decisions produced by both learned Counsels for respondents and appellant, there is no dispute regarding principles laid down by their Lordships. Based on the facts and circumstances of the case, their Lordships laid down the principle. In view of my above said facts, there is a

substantial question of law and facts and there is withholding of material before the Trial Court. Hence, by liberally construing the word “**sufficient cause**” used in Section 5 of the Limitation Act, an opportunity is required to be given to the appellant to contest the case on merits, by condoning the delay in preferring an appeal challenging the preliminary decree as well as final decree passed, based on the preliminary decree. Hence, I answer **point No.3** in the **affirmative**.

29. **Point No.4:**

In the result, I proceed to pass the following:

ORDER

I.A.No.1 filed by appellant under Section 5 of the Limitation Act, is hereby allowed.

Consequently, delay in filing the appeal is condoned.

No order as to costs.

(Dictated to the Stenographer Grade-1, transcribed by her on Computer and after corrections, signed and then pronounced by me in open Court on this the **3rd day of January, 2024.**)

(Prabhavathi M. Hiremath)
Prl. District and Sessions Judge,
Mysuru.

:R:

ANNEXURE**Witnesses examined on behalf of Applicant in support of IA1:**

P.W.1 :: Dilip Kumar (applicant/appellant)

Documents marked on behalf of Applicant in support of IA1:

Ex.P.1 :: Certified copy of Judgment and Decree in
O.S.No.734/2006

Ex.P.2 :: Certified copy of Order passed in FDP 26/2011

:R:

Prl. District and Sessions Judge,
Mysuru.

