



**IN THE COURT OF SENIOR CIVIL JUDGE AND JMFC.,
AT GUBBI.**

Dated: this the 24th Day of June 2026

**Present: Smt.ANUPAMA D.
B.Com.,LL.B.,
Prl.Senior Civil Judge & JMFC**

R.A.27/2024

Appellant: Y.M.Muddaraju S/o Late Muddaiah,
Aged about 49 years,
R/o Kadabettanahalli, (Yarranahatti),
Kodiyala Post, Chelur Hobli,
Gubbi Taluk.

(Defendant in Trial Court)
(Reptd. By Sri.M.P.M.Advocate)

V/s

Respondent: 1. M. Manjula W/o Late Manjunath,
Aged about 44 years,
R/o Kambala Gollarahatti,
Sompura Hobli, Kambala Post,
Nelamangala Taluk,
Bengaluru Rural District.



2. Gangamma W/o Late Muddaiah,
Aged about 76 years,

3. Rathnamma W/o Late Junjegowda,
Aged about 51 years,

Both are R/o Kambalada Gollarahatti,
Kambala Post, Sompura Hobli,
Nelamangala Rural District.

**(Plaintiff and defendants 1 and 2 in
the Trial Court)**

(Reptd.By Sri.S.B., Adv)

Date of institution of Appeal	22-06-2024		
Nature of Judgment or order appealed against	Judgment and Decree passed in OS 17/2018 on 10-02-2020 by the Learned Prl.Civil Judge and JMFC., Gubbi.		
Date on which the Judgment in the present Appeal, pronounced	24-06-2026		
Total Duration	<u>Year/s</u> 02	<u>Month/s</u> 00	<u>Day/s</u> 01

Sd/-

(Smt.ANUPAMA D.)

**Prl.Senior Civil Judge & JMFC.,
Gubbi.**



JUDGMENT

This is Defendant No.3's appeal.

The plaintiff has filed this suit against the defendant for the relief of partition and separate possession of her legitimate 1/4th share in the suit schedule property.

2. Parties are referred in their same ranking as before the Trial court for convenience.

3. The brief facts of the case of plaintiff are:-

3(a). The plaintiff and defendant No.2 are the daughters, defendant No.1 is the wife and defendant No.3 is the son of one Muddaiah. The said Muddaiah has acquired the suit schedule property through inheritance and he was in possession and enjoyment of the suit schedule property during his life time and he died



interstate and as such plaintiff and defendants have succeeded the suit schedule property and they have been in joint possession and enjoyment being the member of the Hindu Undivided joint family. The defendants have turned hostile to the interest of the plaintiff over the suit schedule property and as such the plaintiff has approach the defendants for partition in the suit schedule property for which the defendants have refused which constrained the plaintiff to institute the instant suit for partition and separate possession.

4. After registration of the suit, summons came to be issued to the defendants No.1 to 3. the defendants have appeared before the court through their counsel but they



did not choose to file their written statement and they did not contest the suit.

5. The plaintiff has got examined as PW-1 and produced 5 documents and got marked the same as per Ex.P.1 to 5. By considering the evidence of PW-1 and documents produced by her, the learned Trial Judge decreed the suit of the plaintiff by impugned judgment dated:10-02-2020. Aggrieved by the same, the defendant no. 3 has preferred this appeal on the following **grounds:**

6. THE GROUNDS OF APPEAL

1. *The impugned judgment passed by the learned trial court is illegal and otherwise erroneous, opposed to law facts and probabilities of the case.*



2. *The appellant couldn't able to participate in the proceedings of the case due to his ill health before the trial court.*
3. *The learned trial court has not taken into consideration that the plaintiff has failed to prove the existence of Hindu undivided joint family of appellant and respondents.*
4. *As the impugned order is arbitrary, perverse, illegal, improper, capricious and unjustifiable and also against to the established principles of law the same has to be dismissed by allowing this appeal.*
5. *The learned trial court has blindly accepted the documents produced by the plaintiff and not paid attention to the documentary evidence in which it is clearly shown that the suit schedule property was already divided between the appellant and his father.*
6. *The impugned judgment is not in conformity with the settled position of law and suffers from legal infirmities and is liable to be set aside.*



7. *The appeal is in time for the reasons that sworn to in the affidavit annexed to in the application under Sec.5 of Limitation Act.*

6(a) On all these grounds, he prays to allow the appeal and remand the matter to the trial court for fresh trial.

7. After issuance of notice, the respondents appeared through their counsel and Trial Court records were secured.

8. In this appeal, the appellant has maintained an application u/s 5 of Limitation Act by praying to condone the delay in filling of this Appeal.



9. In this regard, he has got examined himself as PW1 on IA – I and produced as many as 70 documents and got marked the same as Exs. P1 to 70 on I.A – I.

10. I have heard the arguments of learned counsels for both the parties.

11. The following points that would arise for my consideration are;

1. Whether the appellate proved satisfactory grounds to consider IA – I and to condone the delay in filling of this Appeal?
2. Whether the Trial Court is justified in decreeing the suit of the plaintiff on the basis of available documents.
3. Whether the Judgment and Decree of the Trial court is capricious and not in accordance with Law, thereby calls for interference by this Appellate Court?



4. Whether the appellant has made out satisfactory grounds to allow the Appeal and remand the case for fresh disposal after providing him opportunity to file his defence?

5. What order?

12. My answers to the above points are as under:

Point No.1 : In Negative

Point No.2 : In Affirmative

Point No.3 : In Negative

Point No. 4 : In Negative

**Point No. 5 : As per final order,
for the following :**

:-REASONS:-

13. POINT NO.1:- In this case the appellant has filed this IA under Section 5 of Limitation Act, by paying this court to condone the delay in filing of the appeal.



13(a). It is stated in the affidavit filed in support of the application that, the respondent no. 1 has filed suit in OS 17/2018 against him and respondent no. 2 and 3 for the relief of partition and separate possession with regard to suit schedule property. The said suit came to be decreed. His father had already divided the family properties during his lifetime and revenue documents were also mutated in his separate name. He had engaged counsel before the trial Court but failed to file written statement well within time due to his ill health and due to the reasons of COVID-19 pandemic. He could not able to communicate his counsel and inform him about his defence to file his written statement before the court. By considering his absence before the court and non-filing of written statement, the trial Court has decreed the suit in OS 17/2018, from which



he has now got irreparable loss. Thereby, on these grounds he prays to allow the application.

13(b). In this regard he has produced Nearly about 70 documents which are medical bills, OPD receipts, discharge summary, blood test reports, lab and CT scan reports, other receipts and X-rays.

13(c). Upon meticulous verification of these documents, it is come to know that the appellant has produced the medical documents which belongs to Mrs. Kanya Kumari, wife of Shashidhar. Nowhere in the affidavit filed in support of the IA, the appellant has explained with regard to the relationship of this Kanya Kumari with him. In the affidavit he has contended that due to his ill health



he could not able to contact his counsel to give details with regard to his defence to file written statement before the trial Court. However, it is an admitted fact that, in the year 2019, COVID pandemic was there. This suit came to be decreed in 2020. On perusal of the order sheet of OS 17/2018, it is come to know that the defendant no. 3 who is appellant before this Court had represented through Sri BSS Advocate on 23.03.2018. In the year 2018 there was no pandemic of COVID-19. Since from 23.03.2018 the learned trial judge has adjourned the case for filing of written statement, for hearing on IA, for passing of orders on IA, for plaintiff's evidence and also for arguments till 10.02.2020. On all these hearing dates the defendant no. 3 had an opportunity to file his defence before the trial Court. Even in spite of providing number of opportunities by the



trial Court, the defendant no. 3 had not filed his written statement before the trial Court. Now he has filed this appeal. The suit came to be decreed on 10.02.2020 and the decree was passed on 17.02.2020. So this appeal came to be filed on 22.06.2024. There are 4 years, 1 month 5 days delay in preferring this appeal. The appellant has not at all furnished a single piece of document before this Court to consider that since from 2020 to 22.06.2024 he was suffering from ill health, hence he could not able to contact his counsel to file this appeal. The documents produced by the appellant are pertaining to one Kanya Kumari. No where he has contended with regard to the relationship between him and Kanyakumari in his affidavit. Moreover, he has contended in his affidavit that, he was suffering from ill health during that period. The appellant has



utterly failed to prove that he was suffering from ill health and thereby he could not able to contact his counsel to file this appeal.

13(d). In order to condone the delay in preferring the appeal, the day by day delay in filing of the appeal has to be explained. But, in this case even though he has contended that he was suffering from ill health, thereby he could not able to contact his counsel to prefer this appeal., he has not produced a single piece of document before this court in support of the same. On the other hand, he has produced the medical records of one Kanyakumari w/o Shashidhara.



13(e). Moreover, in the cross examination on IA I filed u/s 5 of Limitation Act, the appellate has admitted that, in the year 2024 he has got executed a Gift deed infavour of his Son. Thereby it is clear that, even inspite of having knowledge about decree of this suit, and also filling of this appeal on 22.06.2024, he has executed the said Gift deed infavour of his son. This itself clearly reveling his intention of depriving the shares of the plaintiff, D1 and 2 in the suit properties. Moreover, he has also admitted that, in FDP 4/2021, he has engaged counsel on his behalf. But he caused delay in filling of this appeal till 2024. It cannot be believed that, he was hale and healthy while filling of vakalath in FDP 4/2021 but, he was ill health to prefer this appeal till 2024. The intention of appellant behind this appeal is clearly disclosing in his evidence itself.



Accordingly, it is clear that the appellant has utterly failed to prove the contentions of the affidavit filed in support of IA No. 1. Thereby, I have answered **point No.1 in negative.**

14. Point nos. 2 to 4:

Since these points are interconnected to each other, they are taken up together for consideration in order to avoid repetition of facts.

14(a). The plaintiff has filed this suit against the defendants for the relief of partition and separate possession over the suit schedule property. In the appeal grounds, the appellant has taken up a specific ground that, during the life time of his father, the family properties were



partitioned and khata was entered in his name and it reflects in the RTC produced by the plaintiff itself.

14(b). It is true that, in column number 10 of RTC produced by the plaintiff i.e., Exs. P1 to 3, before the name of defendant no. 3 with respect to 2 acres 20 guntas, it is mentioned as Partition. In this suit, the plaintiffs are claiming their 1/4th share in the entire suit property i.e. 4 acre 20 guntas. On meticulous verification of Exhibit P1 to 3, it is come to know that, 2 acre of property in suit survey number is still standing in the name of her father Muddaiah and the remaining 2 acres 20 guntas is standing in the name of defendant no. 3. Even though the defendant no. 3 has contended that he acquired the said 2 acres 20 guntas of property in suit survey number under partition,



he has not produced any document before the trial Court to consider the same. Only on the basis of entries made in the RTCs, in the absence of production of particular partition deed, the court cannot come to a conclusion that, there was a partition. He failed to produce such document before the trial court by taking up a specific defence. Thereby the learned Trial Judge has rightly appreciated Exhibits P1 to P3 which are standing in the name of father of plaintiff and defendant no. 3.

14(c). The plaintiff has produced all the relevant materials before the trial court to consider her suit. As there is no rival contentions by defendant no. 1 to 3 and the plaintiff being the daughter of defendant no. 1 and sister of defendant no. 2 and 3 and also being the coparcener of



Hindu joint family, is entitled for legitimate 1/4th share in the suit properties with separate possession. Thereby the Learned Trial Judge has rightly decreed the suit of the plaintiff and allotted 1/4th share to the plaintiff and he has also declared one fourth each share to defendants 1 to 3 also. Thereby it is clear that the said impugned Judgment and Decree of the Trial Court is in accordance with law and I do not find any irregularities to cause interference in the said impugned Judgment and Decree of the Trial Court.

14(d). Further, in this appeal, the appellant is seeking to remand the matter for fresh trial by providing him an opportunity to file his defence. If at all he was ready and willing to contest the case, he might have been filed his defence before the trial court by utilizing the opportunities



provided to him till pronouncement Judgment. Or else, at least he could have filed his defence before this court along with this Appeal. Simply he is praying to remand the case to the Trial Court for fresh trial. As such he has not furnished his defence before this appellate court to prove his willingness to contest the case, consideration of his prayer with regard to remand of this case for fresh trial, does not arise. Hence, I have answered the above points accordingly.

15. Point no. 5: For the foregoing reasons, I proceed to pass the following:

-.ORDER:-



IA No. 1 filed by the appellant under Section 5 of Limitation Act is hereby dismissed.

Consequently, the Regular Appeal filed by the Appellants U/s.96 R/W Order 41 Rule 1 and 2 of C.P.C. is hereby DISMISSED.

By considering the relationship, there is no order as to costs.

Accordingly Judgment on Decree of the trial court passed in OS 17/2018 dated: 10.02.2020 is hereby confirmed.
Office to draw decree accordingly.

Transmit the Trial Court records along with the copy of this Judgment and decree to the trial court, forthwith.

(Partly dictated to the Stenographer directly on computer and partly dictated through Adalath ai, typed and printed by Stenographer Smt. Padma, the script is corrected, signed



and then pronounced by me in the open court on this, the 24th Day of June 2026.)

Sd/-

(Smt.ANUPAMA D.)

**Prl.Senior Civil Judge & JMFC.,
Gubbi.**

ANNEXURES

**List of witnesses examined on behalf of Appellant on
IA – I filed u/s 5 of Limitation Act before this court.**

PW-1 : Y.M. Mudduraj

Documents marked on IA – I by PW1

Ex.P.1 to 23 : Medical Bills

Ex.P.24 to 27 : OPD records

Ex.P.28 to 33 : Reports

Ex.P.34 : Blood test report

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Ex.P.35 to 46 : Lab Reports

Ex.P.47 to 62 : Receipts

Ex.P63 to 70 : X-Rays.

Sd/-
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