

KAUK010010242022



IN THE COURT OF THE PRL.DISTRICT & SESSIONS JUDGE,
UTTARA KANNADA, KARWAR.

DATED THIS THE 16th DAY OF APRIL-2025

RA NO: 13/2022

PRESENT:

Sri.D.S.Vijaya Kumar,
B.Sc., LL.B.,
Prl. District and Sessions Judge,
Uttara Kannada, KARWAR.

**APPELLANT/
ORIGINAL PLAINTIFF NO.3:**

Smt. Tara @ Reena D/o. Manohar
Naik & W/o. Premanand Naik,
Age: 62 years, Occ: Housewife,
R/o. Behind High School, Angadi,
Karwar Taluk.

(By [Sri.S.Ravi Belurkar.](#), Advocate.)

Vs.

RESPONDENTS:

1. Sri.Ganapati Manohar Naik,
Age: 57 years, Occ: Service,
2. Smt. Suganda @ Madhavi D/o. Manohar
Naik & W/o. Gurunath Naik,
Age: 55 years, Occ: Housewife,
Both R/o. Dumannashitta of Hosali,
Angadi, Karwar Taluk.
3. Smt. Shakuntala @ Namrata D/o.
Manohar Naik & W/o. Maharudra Naik,
Age: 59 years, Occ: Housewife,
R/o. Near Mahamaya Temple,
Sadashivgad, Karwar.

4. Smt. Kasturi @ Leena D/o.
Manohar Naik & W/o. Purushottam Naik,
Age: 70 years, Occ: Housewife,
R/o. Balni, Karwar Taluk.

(By R-1 Sri.N.M.Madiwal, Adv
R-2 & 3 - Exparte)

I.A.No.I TO III

APPLICANT:

Smt. Tara @ Reena D/o. Manohar
Naik & W/o. Premanand Naik,
Age: 62 years, Occ: Housewife,
R/o. Behind High School, Angadi,
Karwar Taluk.

(By [Sri.S.Ravi Belurkar.](#), Advocate.)

Vs.

OPPONENTS:

1. Sri.Ganapati Manohar Naik,
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Naik & W/o. Gurunath Naik,
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ORDERS ON IA. I TO III

The appellant has filed IA.I under Order XLI rule 3-A r/w. Sec. 5 of Limitation Act seeking for condonation of delay of 1255 days in preferring the appeal and IA.II under Order XLI rule 5 of CPC seeking for granting the stay in the further proceeding of OS No.20/2016 dated 28/01/2019 before the Additional Senior Civil Judge, Karwar and IA.III under Order XXXIX rule 1 of CPC seeking for restraining the respondent/ defendant No.1 by transferring suit schedule properties to anyone else other than the family members by way of partition of the suit scheduled properties till the disposal of this appeal.

2. In support of the application, the appellant has filed IA No.I her separate affidavit stating that the plaintiff No.3 in O.S.No.20/2016 before Additional Senior Civil Judge, Karwar filed against her brother for partition and separate possession of the extent of 1/5th share in suit schedule properties. The said case is decided on 28.01.2019. As the said suit is partly allowed, she was thinking of filing appeal against the judgment and decree passed by Trial Court. After the judgment and preliminary decree passed by the Trial Court, we the plaintiffs were discussing with their family members for settlement in partition and separate possession. Thereafter the Covide-19 pandemic lock-down was declared. The limitation for filing is extended till February 2022.

After many negotiation and meeting with their family members, relatives and well-wishers, the defendant No.1 her brother has not agreed for the settlement of partition of entire property. Taking undue advantage of the judgment and preliminary decree passed by Trial Court the defendant No.1 her brother Ganapati Manohar Naik has sold some part of the ancestral suit schedule property. she have filed objection for the same before revenue authorities and also filed one appeal before Deputy Director of Land Records for the change of hissa number of the my own property and also filed another suit before Principal Civil Judge Karwar it is registered under O.S.No.70/2022 for declaration of herself acquired property which was sold by her brother by taking valid consideration under specific performance of contract of sale agreement with regard to 00-06-04 of Madageri village Sy.No.246 hissa 12 out of total area measuring 00-13-08. As taking undue advantage of preliminary decree and judgment passed in OS.No.20/2016 which is partly decreed, the defendant No.1/ respondent No.1 is planning to sell/transfer the entire suit schedule property which is ancestral one. Therefore she have no other option except filing this appeal before Hon'ble Court and in IA No.II she stating that it is necessary to restrain the defendant No.1 for further proceedings of O.S.No.20/2016 dated 28.01.2019. If this application is allowed there will be no injustice, inconvenience, loss or damage to the respondents, at

the same time if this application is not allowed there will be lot of injustice, inconvenience, loss and damage would cause to her and in IA No.III she stating that it is necessary to restrain the defendant No.1 from transferring suit schedule properties to anyone else other then the family members by way of partition, of the suit scheduled properties till the disposal of this appeal. If this application is allowed there will be no injustice, inconvenience, loss or damage to the respondents, at the same time if this application is not allowed there will be lot of injustice, inconvenience, loss and damage would cause to her. Therefore, it is requested to allow the applications.

3. The respondent No.1 appeared through his Advocate and filed objections to IA.I to III contending that the application filed by the appellant under Order 41 Rule 3(A) of CPC R/w. Section 5 of Limitation Act is contrary to law and true facts of the case. Hence the application is not maintainable in law as well as on the facts of the case. Hence the IA deserves to be dismissed with costs. The appellant filed the suit for partition claiming the 1/5th share in the suit schedule properties. But the trial Court partly decreed the suit and allot the share in the judgment to the appellant. The appellant without filed the FDP after the judgment. But necessary delayed. Now filed the appeal only for harassment the respondent No.1. The appellant has to explain the delay of

every day. The delay of 1255 days, no any explanation in the affidavit properly. Hence the question of condonation of delay is not arise. If allowed the IA, it is injustice and inconvenience to the respondent No.1. Hence the IA No.I is liable to be dismissed. The application filed by the appellant under Order 41 Rule 5 of CPC is contrary to law and true facts of the case. Hence the application is not maintainable in law as well as on the facts of the case. Hence the IA No.II deserves to be dismissed with costs. The judgment passed by the trial Court on 28-01-2019. No one filed the any FDP or execution case before the trial Court. The question of stay is not arise. The application filed by the appellant under Order 39 Rule 1 of CPC is contrary to law and true facts of the case. Hence the application is not maintainable in law as well as on the facts of the case. Hence the IA No.III deserves to be dismissed with costs. Hence, prayed to dismiss the application filed by the appellant.

4. Heard arguments of learned counsel for the appellant. The learned counsel for the respondents has not submitted arguments.

5. The following points arise for my consideration:

- 1) Whether the appellant is entitled to condonation of delay as sought in IA.I?

- 2) Whether the appellant/ applicant is entitled for the relief as sought for in IA.II and III?
- 3) What Order ?

6. My finding to the above points are as follows:

Point No.1: In the [Affirmative](#).

Point No.2: In the [Affirmative](#).

Point No.3: As per final order,
for the following:

REASONS

7. **Point No.1**: This appeal is filed questioning the judgment and decree passed in O.S.No.20/2016 on 28-01-2019. The appellant is the plaintiff No.3 before the Trial Court. The appeal is filed on 06-08-2022 and there is delay of 1255 days in filling the appeal. In the affidavit filed in support of IA.I the reason stated for delay is that there was Covid-19 pandemic lock-down that had been extended till February 2022. Besides the same there were family negotiations in the matter involving the defendant No.1 who is their brother and the defendant No.1 retracted from negotiations at the fagend and hence, there is delay in filling the suit. In the objection statement filed by the defendant No.1/Respondent No.1 it is contended that the certified copy of the impugned judgment was obtained by the appellant in time but thereafter the appeal is filed after

inordinate delay. It is further contended in the objection statement that after the judgment the appellant had preferred an appeal before the DDLR Court Karwar for podi proceedings and it shows that the appellant was knowing the judgment passed in this matter. And yet the appeal was not filed in time.

8. I have considered the rival contentions. The parties to the suit/Appeal are own brothers and sisters. The suit is filed for partition and the Trial Court has granted decree in part. The plaintiffs and defendant No.2 are the sisters of the defendant No.1 and the appellant/plaintiff No.3 states that after the judgment and priliminary decree there was settlement negotiations and it was followed by Covid-19 pandemic. Infact from December 2019 till February 2022 there was impact of Covid-19 pandemic. Considering the facts and merits of the matter I am of the opinion that the delay in filling the appeal deserve to be condoned. Consequently point No.1 is answered in Affirmative.

9. **Point No.2 and 3:** The plaintiff No.1 to 3 have filed the suit in O.S.No.20/2016 seeking partition and separate possession of 1/5th share each in Item No.1 to 15 of the suit schedule properties. The relationship between the parties is admitted. In the impugned judgment the Trial Court has observed that, Item No.1 to 6 of the suit properties are the

ancestral joint family properties, and Item No.7 to 15 are the lands granted in favour of defendant No.1, who is the brother of the plaintiffs and defendant No.2, under the Karnataka Lands Reforms Act by granting occupancy right. So the Trial Court has held that as per the decision in the case of Nimbavva and others V/s Chennavirayya and others reported in ILR 2013 Karnataka 6202 the married daughters are not family members and they are not entitled to share in the tenancy lands under Section 24 of the said act. Infact in the entire judgment in several places Item No. 2 to 7 are incorrectly referred to as tenanted lands, and at the end item No.1 to 6 are held as joint family properties and item No.7 to 15 are held as tenancy lands in respect of which occupancy right is granted infavour of defendant No.1. After holding that in respect of the ancestral and joint family properties the female heirs /married daughters have also got equal share strangely in respect of item No.1 to 6 the learned Trial judge has granted $1/10^{\text{th}}$ of share each to the plaintiffs and defendant No.2 and $6/10^{\text{th}}$ share to the defendant No.1 in the said properties and has held that plaintiffs and defendant No.2 are not entitled to any share in item No.7 to 15 properties. After holding that item No. 1 to 6 were ancestral and joint family properties the Trial Court ought have granted $1/5^{\text{th}}$ share each in respect of the said property in the least. However, strangely $1/10^{\text{th}}$ share each is granted to them. Further the decision in

Nimbavva and others V/s Chennavirayya and others has actually been held not a good law in the case of Ishwar V/s. Jattamma Yane Mastamma in RSA No.100212 of 2017 decided on 24-05-2023. By referring to the decision of the division bench of High Court in the case of Arvind and also decision of the apex Court in N. Padmamma case it is held that married daughters are entitled to share in the tenanted lands. Now whether item No.7 to 15 were earlier the tenanted lands held by the father of the plaintiffs and defendants and thereafter the occupancy right was granted in the name of the defendant No.1 after the death of their father requires to be examined. According to the appellants all the properties were ancestral properties and joint family properties of the plaintiffs and defendants. The Trial Court does not seem to have seriously considered all these aspects. Hence, I am of opinion that the impugned judgment and primary decree requires to be stayed as sought for in I.A.No.II. Further, in view of the erroneous findings of the Trial Court discussed above I am of opinion that there is a prima facie case in favour of the appellant and balance of convenience also lies in favour the appellant for granting an order of interim injunction to restrain alienation of the suit properties pending disposal of the appeal. I am of view that otherwise it will result in multiplicity of proceedings causing irreparable and unquantifiable loss and damage to the appellant. Hence, I am of view that an interim

order of injunction to restrain alienation of suit properties as sought for in I.A.III is to be granted. Consequently point No.2 and 3 for answer in the Affirmative.

10. **Point No.2:** In view of my findings on point No.1, I proceed to pass the following:

:ORDER :

IA. I filed by the appellant under 5 of the Limitation Act for condonation of delay is hereby allowed.

IA.II filed by the appellant under Order XLI Rule 5 of CPC is hereby allowed.

IA.III filed by the appellant under Order XXXIX Rule 1 of CPC is hereby allowed.

(Dictated to the stenographer, transcribed by her, revised and corrected by me, signed and then pronounced in the Open Court on this [the 16th Day of April -2025](#))

(D.S.Vijaya Kumar)
Prl.District and Sessions Judge,
Uttara Kannada, Karwar.