

## **ORDER ON I.A.I**

The appellant/applicant has filed I.A.No.I Under Order XLI Rule 3(A) of CPC r/w section 5 of Limitation Act, seeking relief to condone the delay to present the appeal.

In the affidavit, it is stated that the present respondent No.1 has filed OS No. 93/2021 for the relief of partition. But, the Trial Court has wrongly decreed the suit granting 1/5th share each to the defendant No.3 and 4. Hence, the present appellant is aggrieved the judgment and decree of the Trial Court. Further, it is stated that the judgment was pronounced by the Trial Court on 6.2.2023, but on the same time the appellant could not able to contact his Counsel as he was ill health. So, there is 10 months 28 days delay to prefer the appeal. Hence, prays to condone the delay for the interest of equity and justice.

On the other hand, the learned opponent/respondent has filed objections denying all the contents of the affidavit and contended that the application is false, frivolous and not maintainable in the eyes of law or facts. Further, it is stated that

the present appeal is filed after completion of statutory period of appeal and the FDP No. 4/2023 is also pending and on the same petition, notice was also served to the appellant. But, he did not file objections to the main petition of FDP. Further, it is contended that in FDP, the Trial Court has already appointed ADLR/Court Commissioner to divide the suit schedule properties and the Court Commissioner has already submitted its report. But, appellant has not filed any objection to the Commissioner's report. Hence, prays to dismiss the application with costs.

Heard both side and perused material records.

Admittedly, OS No. 93/2021 is for the relief of partition and separate possession. In the affidavit , it is stated that the appellant was ill-health and illiterate. Hence, he was unable to prefer the appeal within time. On the other hand, the opponent/ respondents have denied the same, but no records have been placed to disbelieve the contention of the appellant. Hence, for the interest of equity and justice, I am of the considered view that delay is to be condoned for complete

adjudication dispute between the parties. Hence, I proceed to pass the following:

**ORDER**

I.A.No.I U/ Order XLI Rule 3(A) of CPC r/w section 5 of Limitation Act, is hereby allowed.

The delay of 10 months 28 days is hereby condoned.

The appellant is permitted to contest the matter.

**Senior Civil Judge, Bhatkal.**

**ORDER ON I.A.II**

The appellant/applicant has filed I.A.No.II Under Order XLI Rule 5 of CPC, seeking relief to stay the further proceedings of FDP No. 4/2023.

In the affidavit, it is stated that the present respondent No.1 has filed OS No. 93/2021 before the Trial Court for the relief of partition. But, the Trial Court has wrongly decreed the suit granting

1/5th share each to the defendant No.3 and 4. Hence, the present appellant is aggrieved the judgment and decree of the Trial Court. Further, it is stated that the suit schedule properties are tenancy properties and that of defendant No.3 and 4 are married daughters and they are not entitled to any share in the suit schedule properties. Further, it is stated that in pursuance of the judgment and decree of the Trial Court, the opponents have filed FDP NO. 4/2023 before the Trial Court and wherein, Court commissioner was appointed and they have already submitted commissioner's report. So, if the further proceedings of the FDP is not stayed, then the purpose of filing of this Appeal will remain in factious and the appellant will loose his legitimate share in the suit schedule properties.

On the other hand, the learned opponent/respondent has filed objections denying all the contents of the affidavit and contended that the application is false, frivolous and not maintainable in the eyes of law or facts. Further, it is stated that the present appeal is filed after completion of statutory period of appeal and the FDP No. 4/2023 is also pending and on the same petition, notice

was also served to the appellant. But, he did not file objections to the main petition of FDP. Further, it is contended that in FDP, the Trial Court has already appointed ADLR/Court Commissioner to divide the suit schedule properties and the Court Commissioner has already submitted its report. But, appellant has not filed any objection to the Commissioner's report. Further, it is contended that the Trial Court has rightly passed the judgment and decree in accordance with Hindu Succession Act. Hence, appeal is not maintainable and prays to dismiss the application with costs.

Heard both side and perused material records.

Admittedly, OS No. 93/2021 is for the relief of partition and separate possession. In the affidavit , it is stated that the opponents have filed FDP No.4/2023 and already Court commissioner was appointed and its report was also submitted before the Court. In the instant case, it is admitted that the opponents have filed FDP No. 4/2023. The opponents have contended that the appellant is not entitled relief as claimed and contended the Trial Court has rightly decreed the suit. It is admitted fact that presently FDP 4/2023 is pending

and Court Commissioner has also submitted report. So, complete adjudication of the rights between the parties are absolutely necessary. Hence, for the interest of equity and justice and to avoid multiplicity of proceedings, I am of the considered view that the drawing of final decree is to be stayed till disposal of appeal. Hence, I proceed to pass the following:

**ORDER**

I.A.No.II U/ Order XLI Rule 5 of CPC, is hereby allowed.

The further proceedings of FDP 4/2023 drawing of final decree is hereby stayed till disposal of appeal.

Both the parties are directed to co-operate with the Court to dispose off the appeal as early as possible expeditiously.

Issue intimation to Trial Court.

For arguments.

Call on 09-08-2024.

**Senior Civil Judge, Bhatkal.**

