

THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C
GUNDLUPET

8th July 2019

Present
Sri. Chandrashekar P Diddi
Senior Civil Judge & JMFC.

M.A. 05/2018

- Appellants/
1. Nagamma W/o Mahadevashetty
Aged about 65 years,
 2. Gangadhar S/o Mahadevashetty
Aged about 43 years,
 3. Manjudha S/o Mahadevashetty
Aged about 45 years,
 4. Mahadevi W/o Srinivasa
Aged about 48 years,

All are residing at # 107,
KRC Road, Gundlupet.

(Sri.BKV., advocate)

Versus

- Respondents
1. S.Ravishankar S/o Shanthakumar
Aged about 44 years,
Vijayavilasa, J.P.Rajarathnam
Road, Gundlupet.
 2. K.G.Mahadevaprasad S/o
K.P.Jayappa,
Aged about 44 years,
Vijayavilasa, J.P.Rajarathnam

Road, Gundlupet.

3. C.N.Shobha D/o Manjunath
aged about 35 years,
TB Extension, Gundlupet.

4. G.N.Nandakumar S/o
G.N.Narasimhamurthy,
Aged about 40 years,
Aswini Layout, Gundlupet.

(By Sri. GNS., advocate for R-3
Respondent no.1, 2 and 4 are placed
exparte)

Date of institution of the Appeal 03.10.2018

Nature of appeal	Prays to set aside the order dated 28.08.2018 passed by the Prl., Civil Judge and JMFC Gundlupet.
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Date of order	08.07.2019
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Total Duration	9 months, 05 days
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(Chandrashekar.P.Diddi)
Senior Civil Judge and JMFC.,
Gundlupet

JUDGMENT

This appeal is preferred against the order passed by the
Prl., Civil Judge and JMFC Gundlupet (herein after called as
Trial Court) in Mis. No. 1/2014 order date 28.08.2018.

2.The facts leading to this appeal are as follows:

The petitioner filed Mis no. 1/2014 under order 9 rule 9 of CPC., before the Prl., Civil Judge and JMFC., court, Gundlupet. The trial court dismiss the petition on 28.08.2018. Feeling aggrieved by the said order, petitioner filed this petition for restoration of Mis. No. 1/2014

3. After issuance of petition notice, notice duly served to the respondent no.4. But respondent no.4 not appeared before the court. Paper publication taken against the respondent no1 and 2. Respondent no.1 and 2 not appeared before the court. Sri. GNS advocate has filed memo of undertaking for respondent no.3. But not filed vakalath. Respondent no.3 not filed any objection.

4. The appellant has preferred this appeal with following grounds:

1. The Trial Judge erred in dismissing the petition filed by the Late Mahadevashetty, as the Mahadevashetty dragged the matter from 2008.

2. The trial judge not consider the proper point for consideration.
3. The trial judge cause given by the Late Mahadevashetty for non appearance.
4. On 17.12.2013 case posted for to take steps against the respondent no.2 and 4. The trial judge ought to have dismiss the petition against the respondent no. 2 and 4 not take step. The trail court dismiss the petition entirely.
5. On 17.12.2013 Late Mahadevashetty specifically stated in his evidence that, he was unable to collect the legal representative of 4th respondent and correct address of the 2nd respondent due to old age.
6. The learned Judge failed to note that, the cause of action shown by the deceased Mahadevashetty, sufficient to restore the Mis.no. 1/2014.

5. On these and among other grounds, the appellant prays for set aside the impugned order and sought for temporary injunction.

6. Heard the arguments of appellant's and respondents' counsel. Perused the entire material on record. The following points arise for my consideration.

1. Whether impugned order passed on Mis.no. 01/2014 by the Trial Court appear to be capricious, perverse and arbitrary in nature?

2. What order?

7. My answer to the above points in the following:

Point no.1: In the Affirmative

Point no.2: As per the final order for the following:

REASONS

8. **Point no.1:** The petitioner submitted that, the petitioner father Mahadevahsetty filed O.S.no. 38/2008 for

Declaration and Permanent injunction. The said suit is dismissed. Therefore, Mis no. 18/2011 filed for restoration of O.S.no.38/2008. The petitioners submitted that, due to the old age of the Mahadevashetty, Mahadevashetty not taken steps in Mis no. 18/2011. Thereafter, the Mis petition is dismissed. The petitioner's legal heirs filed the Mis. No. 01/2014 for restoration of Mis. No. 18/2011. The Mis no. 01/2014 dismissed for not taking the steps against the respondent no.2 and 4. On perusal of the Mis. No. 01/2014, the trial court held that, the Mahadevashetty not at all appeared in O.S.no. 38/2008, the said O.S. is dismissed for non appearance. The Mahadevashetty has filed Mis. No.. 18/2011, the Mis petition is also dismissed. The appellants submitted that, due to the old age of the Mahadevashetty, Mahadevashetty could not appearing in Original suit and Mis petition proceedings. The petitioners have filed Mis.no. 01/2014 for restoration of Mis no. 18/2011. The learned counsel of the petitioner argued that, the Late Mahadevashetty filed Original suit for the relief of Declaration and Permanent injunction. If the Mis petition is dismissed

the petitioner would be put to untold hardship. In the interest of justice prays from one more chance to the petitioner to lead the cogent evidence in Mis no. 01/2014 for non appearance. As per the submission of the appellants' counsel and in the interest of justice, if one more opportunity is granted to the petitioners no harm or loss will be caused to the respondents. Further, the appeal is filed within limitation. The respondents have not at all filed objection to the main petition and not denied the grounds stated in the petition. As per the aforesaid discussion, the petitioners have made out sufficient grounds to set aside the impugned order. However, the petitioners have filed petition for restoration of petition. The petition is deserves to be allowed on cost. **Accordingly, I answer point no. 1 in the Affirmative.**

9.Point no.2: As per the aforesaid discussion, I proceed to pass following:

ORDER

The Miscellaneous appeal preferred
by the appellant under order 43 Rule 3

of C.P.C., against the order dated 28.08.2018 in Mis. No. 01/2014 passed by the Hon'ble Prl., Civil Judge and JMFC., Gundlupet is hereby allowed on cost Séance 2,000- payable to respondent no.1 to 4.

Mis. No. 01/2014 restored for its original file. It is directed to the petitioners to appear before the Prl., Civil judge court on 17.07.2017 without waiting notice from the trail court.

Further, it is directed to the respondents to cooperate the trail court for disposal of the case. It is directed to the trail court to dispose of the case as early as possible.

(Dictated to the typist in open court, corrected by me and then pronounced in the open Court on this the 8th day of July 2019)

(Chandrashekar.P.Diddi)
Senior Civil Judge and JMFC.,
Gundlupet