

KAMS010002162018



**IN THE COURT OF THE VII ADDITIONAL DISTRICT
JUDGE, MYSURU.**

Dated this the 25th day of February, 2022.

Present

Sri Yashawanth Kumar, B.A[Law], LL.B.,
VII Additional District Judge,
Mysuru

R.A./15/2018

Appellant

Mahadeva Naika S/o Giragi Sidda
Naika, Aged about 48 years,
Residing at Tharaganahalli Village,
Hullahalli Hobli, Nanjangud Taluk.

[By Sri/Smt. SB, Advocate]

V/s

Respondents :

1. Mahadevamma W/o Kempa Naika,
Aged about 53 years, Residing at
Tharaganahalli Village, Hullahalli
Hobli, Nanjangud Taluk.
2. Nagendra S/o Nanjanaika, Aged
about 20 years.
3. Kum. Pallavi D/o Nanjanaika,agg
18 years.

Respondents 2 and 3 are residing at Hura Village, Hullahalli Hobli, Nanjangud Taluk.

[By Sri/Smt.RGL for R1. R2 and R3 - Exparte]

ORDER ON I.A.No.1

I.A.No.1 has been filed by the appellant under Section 5 of the Limitation Act for condoning the delay of 5 years one month in preferring the appeal.

2. In support of this application the appellant has sworn to an affidavit contending that, he is poor, helpless, illiterate person. He was suffering from jaundice and other age related ailments. Hence, he could not contact his Advocate and prefer the appeal in time. The delay is for bonafide reasons, but not deliberate. He has got good grounds of succeeding in the appeal. If the application is not allowed, he will be put to untold hardship, injury and inconvenience. On the other hand if it is allowed, no hardship or injury will be caused to the other side.

3. The respondents have filed their objections to I.A.No.1 contending that, the application is not maintainable. The reasons stated by the appellant for delay in filing the appeal are false. The appellant has not explained each days delay in filing the appeal. The appellant is not diligent in filing

this appeal. It has been filed only with an intention to harass the respondents after lapse of five years.

4. To prove his case, the appellant has examined as PW-1. Respondent No.1 has been examined as RW-1. She has got examined two documents as Ex.R-1 and Ex.R-2.

5. Heard the arguments of learned Counsel for the appellant and the learned Counsel for the respondents on I.A.No.1. Respondents have filed their written arguments.

6. The points arise for my consideration are as under;

1. whether the appellant has shown sufficient cause for condoning the delay in filing this appeal?

2. What order?

7. My findings on the above said points are as under:

Point No.1 : In the negative

Point No.2 : As per final order,

for the following;

REASONS

8. **Point No.1:** According to the appellant himself there is a delay of five years one month in preferring this appeal. Therefore, there is huge delay in filing this appeal. The appellant has stated that, he is poor, helpless, illiterate person;

he was suffering from jaundice and other age related ailments and therefore, he could not contact his counsel and prefer the appeal in time. The appellant has been examined as PW-1. He has reiterated the same in his chief examination. In his cross-examination he has stated that, since last 10 years he is having ill health, he is suffering from jaundice for which he has taken treatment in his Village for about three months. He has admitted that after taking treatment he has recovered.

9. Though the petitioner has stated that, he was suffering from ill health, he has not produced any document to prove the same. In fact, it is his evidence that, he has taken treatment for jaundice for about 3 months and thereafter, he has recovered. Nothing has been stated as to why he has not made effort to file appeal after recovery from jaundice. It is stated that, since from the date of death of his son his health is not good. However, it cannot be accepted that, for 10-12 years he was suffering from ill health in the absence of any evidence to prove the same. Therefore, the appellant has not shown sufficient cause for not filing the appeal with in time.

10. The respondent No.1 is examined as RW-1. In her cross-examination she has denied that the appellant is having eye sight problem and after the death of his son he is suffering from ill health. Therefore, there is no admission in the evidence of RW-1 regarding the ill health of the appellant.

11. The learned Counsel for the respondents has relied on a decision which is reported in **2021 SCC Online SC 1260**

[Majji Sannemma @ Sanyasirao vs Reddy Sridevi and others] wherein page 20 it is observed as under;

20. In the case of *Basawaraj* (supra), it is observed and held by this Court that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case. It is further observed that the expression "sufficient cause" cannot be liberally interpreted if negligence, inaction or lack of bonafides is attributed to the party. It is further observed that even though limitation may harshly affect rights of a party but it has to be applied with all its vigor when prescribed by statute. It is further observed that in case a party has acted with negligence, lack of bonafides or there is inaction then there cannot be any justified ground for condoning the delay even by imposing conditions. It is observed that each application for condonation of delay has to be decided within the framework laid down by this Court. It is further observed that if courts start condoning delay where no sufficient cause is made out by imposing conditions then that would amount to violation of statutory principles and showing utter disregard to legislature.

12. It is clear from the above decision that the discretion to condone the delay has to be exercised judiciously and sufficient cause cannot be liberally interpreted if negligence, inaction or lack of bonafides is attributed to the parties. In the above cited decision, the Hon'ble Supreme

Court observed that when no explanation much less a sufficient or satisfactory explanation had been offered for condonation of huge delay of 1011 days in preferring the appeal, exercising discretion of condoning such huge delay is not at all justified. The above decision is aptly applicable to the facts and circumstances of this case. In this case also the appellant has not shown cause much less sufficient cause for condoning the huge delay, which is of 1855 days.

13. More over, in this case the suit was decreed on 27.11.2012. Thereafter, final decree proceedings initiated in the year 2013. The appellant has admitted in his evidence that, he came to know about decreeing the suit when the Surveyor came to measure the land in the final decree proceeding. The copy produced by the respondents show that, the final decree was passed on 23.11.2016. Therefore, much before 23.11.2016, the appellant came to know about the decree of the suit. But, this appeal has been filed on 11.01.2018 i.e., after about 2 years. Therefore, even after measurement of the land by the Surveyor in the final decree proceeding, the appellant has not made an efforts to file an appeal against the decree.

14. Under the above circumstances, the appellant has not shown sufficient cause for condoning the delay of five years one month in preferring this appeal. Hence, I answer point No.1 in the negative.

15. **Point No. 2** : In view of the above discussion, I proceed to pass the following;

ORDER

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

Consequently, the present appeal i.e., R.A.No.15 of 2018 filed by the appellant is also dismissed.

Under the circumstances, parties shall bear their own costs.

Send a copy of this order to the Trial Court forthwith.

[Dictated to the Judgment Writer, transcript revised, and then pronounced by me in the open Court on this the 25th day of February, 2022]

[Yashawanth Kumar]
VII Additional District Judge,
Mysuru.