HIGH COURT FOR THE STATE OF TELANGANA

****

I.A.No.1 of 2022
in/and

APPEAL SUIT NO.153 OF 2022

BETWEEN:

M. Sunitha Yadamma, W/o Yadaiah,
D/o late Ramchander, aged about 42 years,
Occ: Household, R/o Aknoor Village and Mandal,
Medak District and two others.

...Appellants/Plaintiffs

And

M.Ramulamma, W/o late Ramchander,
aged about 64 Years, Occ: Household,
R/o Amdur Village, Jinnaram Mandal,
Medak District and others.

...Respondents/Defendants

JUDGMENT PRONOUNCED ON : 14.07.2023

THE HON'BLE THE ACTING CHIEF JUSTICE P.NAVEEN RAO
AND
THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA

1.	Whether Reporters of Local Newspapers may be allowed to see the Judgments ?	:	YES
2.	Whether the copies of judgment may be marked to Law Reporters/Journals	:	YES
3.	Whether their Ladyship/Lordship wish to see fair Copy of the Judgment ?	:	No

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AND
THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA

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…Respondents/Defendants

!Counsel for the appellants : Sri Krishna Mohan Sikharam

Counsel for the Respondents : D.Prakash Reddy learned senior counsel
Rep.Sri B.Rajeshwar Rao

<Gist :

>Head Note:

? Cases referred:

(2008) 8 SCC 321
(1998) 7 SCC 123
(2012) 5 SCC 157
(2013) 12 SCC 649

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JUDGMENT: *(Per Hon'ble Sri Justice Nagesh Bheemapaka)*

Heard Sri Krishna Mohan Sikharam, learned counsel for the appellants and Sri D. Prakash Reddy, learned senior counsel represented Sri B. Rajeshwar Rao, learned counsel for the respondents.

2. Aggrieved by the judgment and decree in O.S.No.507 of 2018 dated 05.03.2018 on the file of Court of XIII Additional District and Sessions Judge, Ranga Reddy District, the appellant filed this appeal suit.

3. The plaintiffs are the grandchildren of Late Laxmiah and Late Pentiah, who were both pattedars of the agricultural land in question. In 1970, Late Pentiah sold his share in the land to Late Laxmiah, who then became the absolute owner of the entire property. The annual yield from the land was given to the plaintiffs' father, Late Ramchander, who was a government servant. Late Ramchander died, leaving behind the plaintiffs and the respondents as his legal heirs. The plaintiffs were minors at the time of his death, so they never interfered with the affairs of the property. The eldest son, Respondent No. 10, was looking after the property and is currently in occupation of it. On January 15, 2008, the plaintiffs

demanded a partition of the property from their mother, respondent No.1. She gave them an evasive reply, so the plaintiffs made inquiries and found out that the defendants had colluded to alienate the property by executing a forged sale deed in the name of Late Ramchander. The plaintiffs argue that the sale deed is forged and fabricated, and that even if it were genuine, it would only be binding to the extent of Late Ramchander's share in the property. They also argue that the defendants have executed further sale deeds in collusion with other people, and that all of these sale deeds are liable to be cancelled.

4. Based on the pleadings of the parties, the Trial Court framed the following issues.

1. *Whether the suit schedule property is joint family property of plaintiffs and D1 and whether the plaintiffs are entitled to seek partition of the suit schedule property?*
2. *Whether the plaintiffs are entitled to preliminary decree as prayed for?*
3. *Whether the plaintiffs are entitled to claim cancellation of sale deeds as prayed for ?*
4. *whether the sale deeds executed by the Ramachander, P. Ramdas and I. Ramachandra Reddy are binding on the plaintiffs?*
5. *To what relief?*

5. On behalf of plaintiff, 2 witnesses were examined and 31 documents were marked. On behalf of defendant, 3 witnesses were examined and 13 documents were marked.

6. On analyzing the evidence on record, the trial Court held that as the plaintiffs failed to establish that as on the date of filing of the suit,

the suit schedule property is intact and it is the joint family property of plaintiffs, defendant Nos.1 to 3 and 10, as such they are not entitled for partition of the said property and also not entitled for cancellation of the sale deeds bearing document Nos.1629 of 1995 dated 23.11.1995, 3668 of 1996 dated 31.10.1996, 3669 of 1996 dated 31.10.1996 and 3361 of 1997 dated 13.12.1997 and dismissed the suit of the plaintiffs.

7. Aggrieved by the judgment and decree, plaintiffs are in appeal. As there is delay in filing the appeal, the appellants filed I.A.No.1 of 2022 to condone the delay. The appellants/plaintiffs submit that there is delay of 355 days in filing the present appeal. The delay is caused in view of receiving the certified copies of judgment and decree on 27.11.2018 and also death of plaintiff No.4 during the pendency of the suit.

8. Respondent No.9 filed counter by submitting that even according to the applicants, he received the certified copy of the Judgment and Decree in O.S.No.507 of 2008 on 27.11.2018 but claim ignorance for not pursuing it with their counsel till February, 2020 and it is strange to state that they have realised that the appeal was not filed before this Hon'ble Court just before Covid pandemic struck. It is further submitted that the applicants went to the extent of taking benefit of death of plaintiff No.4 in the suit, whereas he died on 22.05.2016 much before the date of judgment in the suit. The death of the plaintiff No.4 has no relevance to delay in filing the present appeal.

9. In the counter-affidavit filed by respondent Nos.11, 12 and 13, they have urged that appeal has to be filed within 90 days from the date of judgment, but the appeal was filed after lapse of 3 years. Period of limitation expired long before Covid-19 virus spread and imposition of lockdown. The orders of Hon'ble Supreme Court are applicable to save limitation if period of limitation has not expired before 23.03.2020. Further, the applicant has also wrongly computed the delay as 355 days. The total delay is more than 1000 days. Further, the death of Plaintiff No.4 cannot be a ground to condone delay as judgment and decree was passed by the trial Court after a gap of approximately 20 months from the date of death of Plaintiff No.4. No cogent reasons are assigned to condone inordinate delay.

10. The learned counsel for the plaintiffs contended that the delay caused in filing the present appeal was due to death of plaintiff No.4 and Covid-19 pandemic. On the other hand, learned counsel for the respondent submitted that the inordinate delay caused in filing the present appeal was not sufficiently explained by the plaintiffs. Respondents further submitted that the plaintiffs seek to fall on the death of plaintiff No.4 who died on 22.05.2016 while the judgment and decree in O.S.No.507 of 2008 was delivered on 05.03.2018, which is a clear indication that the plaintiffs have approached this Court with unclean hands by stating false grounds for their delay in filing this appeal and prayed to dismiss this appeal.

11. Section 96 of CPC vests right in an aggrieved party to avail remedy of appeal. Against the decision of the District Court, appeal shall lie to the High Court. Remedy of appeal has to be availed within 90 days from the date of decree in the suit. Section 5[1] of the Limitation Act vests discretion in the High Court to entertain an appeal filed after 90 days by condoning the period of delay. Such condonation is subject to the appellant showing **sufficient cause** for not availing the remedy of appeal within 90 days.

12. Scope of Section 5 of the Limitation Act and scope of power of Court to condone the delay in filing an appeal was subject of consideration in plethora of precedent decisions of this Court and the Hon'ble Supreme Court. Suffice to note few land mark decisions to understand the concept of **sufficient cause**.

12.1. In **Perumon Bhagvathy Devaswom Vs Bhargavi Amma[2]** and **N.Balakrishnan Vs M.Krishnamurthy[3],** the Supreme Court considered what is meant by '**sufficient cause**' and the scope of exercising of discretion in condoning delay.

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[1] **S.5. Extension of prescribed period in certain cases**.—Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.—The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

[2] (2008) 8 SCC 321

[3] (1998) 7 SCC 123

12.2. In **Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai[4],** the Hon'ble Supreme Court held as under:

> "14**.** ...The law of limitation is founded on public policy. The Limitation Act, 1963 has not been enacted with the object of destroying the rights of the parties but to ensure that they approach the court for vindication of their rights without unreasonable delay. The idea underlying the concept of limitation is that every remedy should remain alive only till the expiry of the period fixed by the legislature. At the same time, the courts are empowered to condone the delay provided that sufficient cause is shown by the applicant for not availing the remedy within the prescribed period of limitation.
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> 15. The expression "sufficient cause" used in Section 5 of the Limitation Act, 1963 and other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which serves the ends of justice. No hard-and-fast rule has been or can be laid down for deciding the applications for condonation of delay but over the years this Court has advocated that a liberal approach should be adopted in such matters so that substantive rights of the parties are not defeated merely because of delay.
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> 16**.** In ***Ramlal* v. *Rewa Coalfields Ltd***. [AIR 1962 SC 361] this Court while interpreting Section 5 of the Limitation Act, laid down the following proposition: (AIR pp. 363-64, para 7)
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> > "*7*. In construing Section 5 (of the Limitation Act) it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, ***when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed.*** The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the court to condone delay and admit the appeal. ***This discretion has been deliberately conferred on the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice.***"
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> 17**.** In ***Collector (LA)* v. *Katiji*** [(1987) 2 SCC 107] this Court made a significant departure from the earlier judgments and observed: (SCC pp. 108-09, para 3)
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> > "*3*. The legislature has conferred the power to condone delay by enacting Section 5 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on '*merits*'. The expression 'sufficient cause' employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice—that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in

[4] (2012) 5 SCC 157

the hierarchy. And such a liberal approach is adopted on principle as it is realised that:

> (*1*) Ordinarily a litigant does not stand to benefit by lodging an appeal late.
>
> (*2*) Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
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> (*3*) 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
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> (*4*) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
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> (*5*) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
>
> (*6*) It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so....."

18. In ***N. Balakrishnan* v. *M. Krishnamurthy*** [(1998) 7 SCC 123], the Court went a step further and made the following observations: (SCC pp. 127-28, paras 9, 11 & 13)

> "*9*. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. ***Length of delay is no matter, acceptability of the explanation is the only criterion.*** Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.
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> xxx
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> *11*. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The

> law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. ***So a lifespan must be fixed for each remedy.*** Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. ***The law of limitation is thus founded on public policy.*** It is enshrined in the maxim *interest reipublicae up sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. ***They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly.*** The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.
>
> xxx
>
> *13*. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss."
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> (emphasis supplied)

12.3. On review of precedent decisions in **Esha Bhattacharjee v. Raghunathpur Nafar Academy[5],** the Supreme Court summarized the principles to be applied while deciding a condonation of delay petition as under:

> "21. From the aforesaid authorities the principles that can broadly be culled out are
>
> 21.1**.** (*i*) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.
>
> 21.2. (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.

[5] (2013) 12 SCC 649

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) ***No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.***

21.5. (v) ***Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.***

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) ***The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.***

21.8. (viii) ***There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.***

21.9. (ix) ***The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.***

21.10. (x) ***If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.***

21.11. (xi) ***It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.***

21.12. (xii) ***The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception***.

21.13. (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

22.1. (a) ***An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.***

22.2. (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3 (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency

> and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.
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> 22.4**.** (d) The increasing tendency to perceive delay as a non- serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters."
>
> (emphasis supplied)

13. From the precedent decisions, it is discernible that the Court is vested with power to condone the delay in filing an appeal if sufficient cause is shown by the litigant. While assessing the reasons for delay and the quantum of delay, Court should adopt liberal approach. It is not necessary that person should explain every day's delay in literal sense. When substantial justice and technical considerations are pitted against each other cause of substantial justice should be preserved. Any course of action adopted by the Court must serve the ends of justice. Once the Court is convinced that delay is properly explained and is non-deliberate, court must lean in favour of condoning the delay.

14. However, while exercising its discretion to condone delay, the Court is required to see whether delay is satisfactorily explained; there was no deliberate, wanton delay in prosecuting the litigation; litigant was not resorting to dilatory tactics; whether explanation lacks *bona fides* of litigant. The Court should also keep in mind the prejudice that may be caused to decree holder. The right accrued to decree holder by lapse of time due to his own failure to prosecute legal remedy within reasonable time cannot be lightly ignored. When the delay is long, as in this case, the scrutiny is rigid and burden is heavy on the litigant to explain every

aspect of his conduct and behaviour, fairly and freely during the interregnum. Such assertions should not be fanciful.

15. The total delay in filing appeal is more than 1000 days and not 355 days as falsely claimed by the applicants. The orders of Hon'ble Supreme Court excluding the period covered by Covid-19 restrictions do not come to the aid of the applicants as time to file appeal expired long before the advent of Covid-19 restrictions.

16. In the above background, it is necessary to consider whether the applicants have furnished sufficient cause for the delay. Further, the conduct of appellant must also stand the test of *bona fides,* fair and frank submissions, not resorting to falsehood, misrepresentation and suppression.

17. The judgment in the suit was rendered on 05.03.2018. Applicants claim to have received the certified copy of the judgment on 27.11.2018. No reason is shown why it took that much time to secure certified copy. They claimed to have approached the counsel in O.S.No.507 of 2008 and instructed him to file appeal. When they instructed the counsel to file appeal is not clear. How they were pursuing with him is not stated and why they waited till 2020 is not stated. Then, they take excuse on Covid-19 pandemic. Reference to death of plaintiff no.4 on 22.05.2016 also has no relevance.

18. It is thus clear from the averments in the affidavit filed in support of the I.A., the applicants have not satisfactorily explained the reasons caused for inordinate delay in filing the present appeal. The averments are vague. The averments do not meet the requirements to explain sufficient cause for inordinate delay. They are casual. It is clear that the appellants were resorting to dilatory tactics. They lack *bona fides* in the submissions. Condoning the inordinate delay would certainly cause prejudice to other side. In the facts of this case, it is safe to conclude that the petitioners have come forward with false and frivolous reasons in filing this appeal with delay. Hence, I.A.No.1 of 2022 to condone delay in filing appeal is dismissed. Consequently, A.S.No.153 of 2022 and I.A.Nos.2 and 3 of 2022 are dismissed. Pending miscellaneous applications if any shall stand closed.

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P.NAVEEN RAO, HACJ

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NAGESH BHEEMAPAKA, J

Date: 14.07.2023
Vrks/kkm

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