



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF MAY, 2024

BEFORE

THE HON'BLE MR JUSTICE M.G.S. KAMAL

WRIT PETITION NO. 13525 OF 2024 (GM-CPC)

BETWEEN:

1. SMT. KALAMMA
W/O LATE NARASIAH,
AGED ABOUT 89 YEARS,
2. SMT. JAYAMMA
D/O LATE NARASIAH,
W/O RANGASWAMY,
AGED ABOUT 66 YEARS,
3. SMT. SAROJAMMA
D/O LATE NARASIAH,
W/O DHANANJAYA,
AGED ABOUT 63 YEARS,
4. SMT LAKSHMAMMA
D/O LATE NARASIAH,
W/O VASANTHA
AGED ABOUT 58 YEARS,
5. SRI NARASIMHAMURTHY
S/O LATE NARASIAH,
AGED ABOUT 53 YEARS,

ALL ARE RESIDING AT
AGALAKOTE VILLAGE,
KASABA HOBLI, MAGADI TAULK,
RAMANAGARA DISTRICT-562 120.

...PETITIONERS

(BY SRI. SHARATH S GOWDA.,ADVOCATE)





AND:

1. SRI NARASIMHAMURTHY
S/O LATE DODDAIAH,
AGED ABOUT 50 YEARS,
2. SMT NARASAMMA
W/O LATE VYRAMUDI
D/O LATE DODDAIAH,
AGED ABOUT 52 YEARS,
3. SMT NANJAMMA
W/O LATE DODDAIAH,
AGED ABOUT 70 YEARS,
4. SRI CHANNAIAH
S/O LATE KEMPAIAH,
AGED ABOUT 74 YEARS,

ALL ARE RESIDING AT
AGALOKOTE VILAGE,
KASABA HOBLI, MAGADI TALUK,
RAMANAGARA DISTRICT-562 120.

...RESPONDENTS

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DATED 24.04.24 PASSED IN MISC NO. 27/2016 BY THE COURT OF PRINCIPAL CIVIL JUDGE AND JMFC, MAGADI VIDE ANNEXURE-A AND ETC.

THIS PETITION, COMING ON FOR HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:



ORDER

The short grievance of the petitioners in this petition is that an ex parte judgment and decree had been passed in O.S.No.464/2013 on the file of Principle Civil Judge & JMFC, Magadi on 25.08.2014 decreeing the suit for partition filed by the respondent Nos. 1 to 3 herein and a final decree proceedings were initiated by the respondents 1 to 3 herein in FDP No. 14/2016 and that only when notice on final decree proceedings were served on petitioners, they learnt about passing of the judgment and decree in O.S.No.464/2013. That immediately thereafter the petitioners filed a Miscellaneous Petition in Mis.P.No.27/2016 under Order 9 Rule 13 of CPC seeking restoration of the suit. That since there was a delay in filing said Miscellaneous Petition, an application seeking condonation of delay was also filed.

2. It is the further case of the petitioners that an application was filed before the Trial Court seeking stay of the said judgment and decree until consideration of the



miscellaneous petition filed by the petitioners. That the petitioners had filed a memo seeking consideration of the said application which came to be rejected by the impugned order, which reads as under;

"Sri. DKG advocate filed NOC RI 104-CBH vakalath for petitioners and also filed memo stating the IA No.1 is pending for consideration. Hence prays to recall the order and post for hearing on IA No.1. order and carefully gone through the records the petitioner at the time of filing petition filed IA No.2 U/sec. 5 of Lamination act by condoning the delay of 755 days. After filing objection by the respondent posted for enquiry on limitation, hence it is just and necessary to conduct enquiry on limitation.

Hence the memo filed by the petitioner counsel is hereby rejected.

PW 2 present and fully cross examined Petitioner counsel submits no further evidence on behalf of petitioner.

Respondents counsel prays time for enquiry. Call on 04.06.2024."

4. Learned counsel for the petitioners submits that merely because an application for condonation of delay is pending consideration, the Trial Court could not have rejected the prayer seeking stay of further proceedings. He further submits that Trial Court ought to have passed



the reasoned order for the purpose of rejecting the said prayer. Hence the petition.

5. Heard. Perused the records.

6. The records would reveal that there is a delay of 755 days in filing the miscellaneous petition by the petitioners and said application is not considered by the Trial Court. The petitioners had filed a memo seeking stay of the proceedings in FDP proceedings.

7. There is considerable force in the submission being made by the counsel for the petitioners that if the FDP proceeding are not stalled, the very purpose of filing the miscellaneous petition would render infructuous.

8. In that view of the matter, petition is disposed of with a direction to the Trial Court to consider application for condonation of delay and application for stay of the final decree proceedings, as expeditiously as possible, within an outer limit of 30 days from the date of receipt of the certified copy of this order, after affording sufficient opportunities to the parties.



Till such time, drawing up of final decree in FDP
No.14/2016 is stayed.

**Sd/-
JUDGE**

RU, List No.: 1 SI No.: 146