
(2016) 01 KAR CK 0043
In the Karnataka High Court
Case No : R.S.A. No. 100622/2015

Dastagirsab Rajesab Nadaf and Others	APPELLANT
Vs	
Kasturi	RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2016) 01 KAR CK 0043

Hon'ble Judges : B.V. Nagarathna, J.

Bench : Single Bench

Advocate : Laxman T. Mantagani, Advocate, for the Appellant; R.M. Kulkarni and Hemalekha K.S., Advocates, for the Respondent

Final Decision : Allowed

Judgement

B.V. Nagarathna, J.—1. Though this appeal is listed for admission, with the consent of learned counsel for parties, the appeal is taken up for final disposal.

2. This second appeal is preferred by the plaintiffs/appellants in O.S. No. 4/2010, assailing order passed, on I.A. No. 1 filed under Section 5 of the Limitation Act, by the first appellate court in R.A. No. 65/2014.

3. The brief facts of the case are that the appellants herein had filed O.S. No. 4/2010 before the Court of the Senior Civil Judge, Bailhongal, seeking relief of declaration and permanent injunction in respect of the suit schedule property. That suit was dismissed by the trial court by judgment and decree dated 26/3/2012. Being aggrieved by the dismissal of the suit, the plaintiffs/appellants herein preferred R.A. No. 65/2014. The said appeal was filed belatedly and there was a delay of 713 days in filing the appeal. Hence, an application under Section 5 of the Limitation Act was filed seeking condonation of delay in filing the appeal. The first appellate court, on considering the said application and on recording the evidence, dismissed the application and consequently, the appeal also stood dismissed. Being aggrieved by that order, the plaintiffs/appellants preferred this

appeal.

4. I have heard learned counsel for the plaintiffs/appellants and the learned counsel for respondent as well as perused the material on record.

5. It is submitted on behalf of the plaintiffs/appellants that there was genuine reason for the belated filing of the first appeal. Appellant No. 1 Sri. Dastagirsab was in-charge of the matter. He is an aged person and he was suffering from chikungunya at the relevant point of time and hence, he could not file the regular appeal. As a result, there was a delay in filing the appeal. Genuine reasons were assigned for the delayed filing of the appeal. But the first appellate court did not appreciate those reasons and has erroneously dismissed the application. He submitted that on account of dismissal of the application filed under Section 5 of the Limitation Act, the appeal has also been dismissed. As a result, the appellants have lost an opportunity of prosecuting their appeal against the judgment and decree of the trial court. Hence, he submitted that substantial questions of law arise in this appeal, which may be raised and answered by this court by admitting this appeal.

6. Per contra, learned counsel for the respondent vehemently supported the order of the first appellate court and submitted that the appellants have repeatedly approached the courts and have harassed the respondents for decades and have filed O.S. No. 4/2010. The suit was rightly dismissed by the trial court. The appellants remained silent for 713 days and thereafter, as an after thought preferred the appeal belatedly. The first appellate court has rightly not appreciated the reasons assigned by the appellants herein for the delayed filing of the appeal and that the order of the first appellate court would not call for any interference in this appeal and that no substantial question of law would arise in this appeal.

7. Upon hearing the learned counsel for the respective parties and on perusal of the evidence on record, it is noted that the appeal would have to be admitted on the following substantial question of law:

"Admit to hear on the following substantial question of law:

Whether the first appellate court was right in dismissing the application filed by the appellants under Section 5 of the Limitation Act, which consequently resulted in dismissal of R.A. No. 65/2014?"

8. From the material on record and upon hearing the arguments of the learned counsel, it is noted that the appellants who are the plaintiffs had preferred O.S. No. 4/2010. That suit was dismissed on 26/3/2012. Admittedly, the appeal was filed belatedly and there was a delay of about 713 days in preferring the appeal. The first appellant had filed his affidavit in support of the application filed under Section 5 of the Limitation Act seeking condonation of delay. The evidence in support of the application was let-in, but the first appellate court has not appreciated the reasons assigned by the appellants for the delay in filing the

appeal. The reasons assigned was that the first appellant was suffering from chikungunya and he was unable to move for a long time and that resulted in belated filing of the appeal. The first appellate court has held that there is no documentary evidence in support of the illness of the first appellant. That may be so, but the non-production of any documentary medical evidence in support of the illness suffered by the first appellant would not imply that he did not suffer any such illness. In fact, the first appellant submitted that he was suffering from chikungunya, which resulted in the belated filing of appeal. Hence, I.A.I under Section 5 of the Limitation Act was filed by the appellant for condonation of 713 days delay in filing the appeal. As there was no documentary evidence, the application was dismissed. Consequently, the appeal was also dismissed. As a result, the appellants have lost an opportunity of prosecuting their appeal impugning the judgment and decree of the trial court.

9. Having regard to the reasons assigned by the first appellant for the delayed filing of the appeal, I am satisfied that the said reasons are sufficient to condone the delay. Therefore, the impugned order passed on I.A.1 filed under Section 5 of the Limitation Act is set aside. Consequently, the appeal in R.A. No. 65/2014 is restored on the file of the first appellate court i.e., Prl. District and Sessions Judge, Belgaum.

10. However, the fact remains that on account of belated filing of the appeal and dismissal of the I.A. and this second appeal being filed before this court, the respondent has been made to spend considerable sums of money on the litigation. Therefore, the ends of justice would be sub-served if the respondent is compensated by way of costs quantified at Rs. 5,000/- to be paid to the respondent when the parties appear before the first appellate court.

11. As the appeal is of the year 2014 and the suit is of the year 2010 and it appears that there were earlier litigations between the parties in respect of the suit schedule property and having regard to the fact that all the parties before the first appellate court are represented by their counsel in this matter, they are directed to appear before the first appellate court on 01/02/2016 without expecting any notice to be issued from that Court on that date or on any other date to be granted by the first appellate court.

12. On that date, the appellants shall pay a sum of Rs. 5,000/- to the respondent herein before the court.

13. On payment of such costs, the first appellate court shall proceed with hearing of the appeal on merits and dispose of the same in accordance with law and in an expeditious manner.

14. The appeal is allowed in the aforesaid terms.