

(2009) 12 KAR CK 0089

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2449 of 2007 (Lac) and Miscellaneous Cvl. 154245 of 2009

Mallikarjun Bhimappa Garasangi, Since dead by his L.Rs,
Smt. Sarojini Garasangi, Krishnaji Garasangi, Kumari Savitri
and Kumar M.M. Garasangi

APPELLANT

Vs

The Special Land Acquisition Officer and Assistant
Commissioner Bijapur

RESPONDENT

Date of Decision : 14-12-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 54, 54 (1)

Citation : (2012) 4 KarLJ 449

Hon'ble Judges : K.N. Keshavanarayana, J;D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : Sangamesh G. Patil and Sri K. Anand Kumar No. 2, for the Appellant; S.S. Kumman, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—This appeal is a classic case which demonstrates as to how gross dereliction, incompetence and carelessness on the part of not one Counsel, but a series of Counsel can deprive a litigant of his legitimate entitlements in law particularly when Counsel accepting the engagement and responsibility from a litigant does not go about their duty and responsibility in a professional manner.

2. Added to this, if the litigants themselves are not diligent in pursuing the remedies available in law and sleep over their rights and remedies for long periods. A combination of these two traits can only be disastrous to a litigant and can even have a backlash on the Counsel, who perhaps have failed in their duties.

3. This appeal is a simple one u/s 54(1) of the Land Acquisition Act, 1894 [hereinafter referred to as "the Act" for short] by a land owner, who was not satisfied with the quantum of compensation as determined by the Land

Acquisition Officer, pursued the matter before the Civil Court by seeking a reference to the Civil Court u/s 18 of the Act was not satisfied with the enhancement, allowed before the Civil Court and has taken his chances to improve upon the compensation payable to him in respect of the lands that he has lost by preferring this appeal u/s 54(1) of the Land Acquisition Act.

4. But unfortunately, for the appellants, 4 in number, there has been hiccups, faltering, stumbling and ultimately a steep fall as we find, inspite of our best efforts to pump life into this appeal to retain it on the board of this Court for examination of the question as to whether the land owner had been provided the just compensation he was entitled to in law, in respect of the land which had come to be compulsorily acquired by the State for a public purpose, the Outcome is only to dismiss the appeal.

5. There is not one hurdle, but several, some of which have proved to be unsurmountable, inevitably leading to dismissal of the appeal, even as barred by Law of Limitation and the lukewarm effort on the part of the counsel, who had appeared for the appellants hitherto proving to be no effort worthy of a professional or an effort worthy of emulation or even an effort sufficient for the revival of an otherwise sinking appeal, which could have perhaps if had survived fetched the appellants relief of enhancement of compensation. We are sorry to note that, is not happening in this appeal for the reasons as we indicate below.

6. Things did not go right from day one in this appeal, which was no appeal in the eye of the law when presented, in the Registry of the High Court at Bangalore on 26.2.2007. The valuation part of the memorandum of appeal claims that, the appeal for the purpose of Court fees was valued at Rs.3,80,565/- and Court Fee of Rs.25,612/- was paid as contemplated under Schedule I to the Karnataka Court Fees and Suits Valuation Act, 1958. Though, the appeal memorandum dated 24.2.2007 is signed by Sri Sangamesh G Patil, learned Counsel, who had filed power for the appellants and who had presented the appeal before the Court and so also the valuation part of the appeal memorandum signed by the very Counsel and of even date, proclaims that a sum of Rs.25,612/- was paid as Court Fee, the reality is that only a sum of Rs.20/- had been paid as per receipt No. 14860, pasted on the top of Page No.1 of the memorandum of appeal. The presentation form filed in the registry is conspicuously silent about any Court Fee paid at all and the relevant column in the presentation form for mentioning the Court fee paid is completely left blank. It appears even as on 26.2.2007, there was a delay of 1258 days in preferring the appeal as the Judgment and Award appealed against is dated 18.6.2003 passed in LAC No. 149/2000 as the so called memorandum of appeal was presented only on 26.2.2007.

7. Though along with the appeal memorandum, an application u/s 5 of the Limitation Act had been filed accompanied by an affidavit sworn to by Krishnaji s/o Mallikarjun Garasangi, resident of Kalakurki, Basavana Bagewadi Taluk, Bijapur District, seeking to explain the inordinate delay of 1258 days in preferring the

appeal, unfortunately, for the appellants, the contents of the affidavit does not either inspire our confidence or constitute sufficient cause to condone the delay, as neither any material is placed before us to substantiate the assertions of the factual aspects made in the affidavit nor we find any bonafides and diligence on the part of the appellants in the manner in which the appeal had been prosecuted.

8. It appears that, the original land owner one Mallikarjun Bhimappa Garasangi, who was the claimant in LAC No. 149/2000. as per the reference before the Civil Court, died on 27.7.2003. immediately following the award dated 18.6.2003. In this state of affairs, if the appeal was to be filed it could have been by the persons, who are legal heirs and if the cause of action to prosecute the appeal survived in their favour or if they could claim that they have an interest in the matter for pursuing appeal against the Judgment and Award of the Reference Court. Instead the course of action that has been resorted to by the learned Counsel, who had filed power for the appellants is that the appeal is prosecuted by the legal representatives of the dead person Mallikarjun Bhimappa Garasangi, as though the death is a development subsequent to filing of the appeal, whereas, infact even more than three years before the presentation of the memorandum of appeal, original land owner, who was the claimant before the Reference Court, had died.

9. However, perusal of the explanation offered in the affidavit accompanying the application filed u/s 5 of the Limitation Act, only indicates that the present appellants are the legal representatives of the deceased Mallikarjun Bhimappa Garasangi, four in number, had guidance of their local Advocate one Mr S M Chowdhari, Advocate [as we can gather from the certified copy of the Judgment and Award of the Reference Court, though the name of Mr S M Chowdhari, as such is not forthcoming in the affidavit] and that their Advocate had come to Bangalore in the month of June 2004 and entrusted the brief to one Sri S A Kalagi, Advocate and after his return, informed this development to them and apprised the second appellant that the appeal will be filed by the said Sri S A Kalagi, Advocate, who will inform the subsequent developments of the case. It is further stated in the affidavit of the second appellant that in view of this development, he was under the bonafide impression that the appeal had been filed in the month of July 2004 itself. The further averment in the affidavit is, he contacted his local Advocate in the month of December 2005 and enquired about his case and the Advocate at Bijapur informed him that, if the appeal is admitted by the High Court, it would take 2 or 3 years for disposal. Therefore, it is claimed that both the Advocate at Bijapur and the second appellant were under the impression that the appeal was pending before the High Court. It is further stated that during the month of November 2006, the appellants' Advocate at Bijapur had come to Bangalore and after his personal work was over he had visited the office of Sri S A Kalagi, Advocate to know the developments in the appeal and was taken by surprise to learn that Mr. S A Kalagi, Advocate was no more [particulars of date of death not mentioned in the affidavit]. The affidavit

further claims that the second appellant was quite shocked and surprised to learn about the death of the Advocate at Bangalore namely., Sri S A Kalagi and after that he came over to Bangalore in the month of June 2006 [we fail to understand as to how a party, who learns the development in November 2006 can go and meet the Advocate at Bangalore along with Advocate in Bijapur in the month of June 2006).

10. It is also the version that the family members of Sri S A Kalagi, pleaded their ignorance about the case of the appellants and thereafter the Bijapur Advocate of the appellants came to this Court, verified in the Registry as to whether any appeal had been filed in respect of the Judgment and Award in the LAC case referred to above and on such verification, it was learnt that no appeal has been filed by Mr.S A Kalagi, Advocate.

11. It is further claimed that thereafter, the deponent returned to his native place and made financial arrangement [obviously towards payment of Court Fee) and immediately applied for the certified copy of the Judgment and Award passed in the reference by the Civil Court and after receiving the same came over to Bangalore, entrusted the brief to the Advocate and his Advocate presented the appeal before this Court. [here again no dates are mentioned about the date of coming to Bangalore and filing] According to the appellants, the delay has occurred, under such bonafide circumstances and was not intentional and therefore deserves to be condoned and by condoning the delay no hardship or loss would be caused to the otherside i.e., Government.

12. It is this application, which had remained even without an opportunity to present itself before this Court as other developments over took it. The recordings in the order sheet, narrates a very sorry state of affair and the haphazard manner of lawyers conducting cases of their clients. The order sheet of different dates reads as under:

MCJ/ANVGJ: 02/08/07

Four weeks" time is granted finally for compliance failing which the appeal shall stand dismissed without reference to the Bench.

MCJ/ANVGJ 03/10/2008

I.As. 1/08 and 1/08 are allowed on payment of costs of Rs.250/- on each I.A. with the Mediation Center within four weeks.

As the matter pertains to Circuit Bench, Gulbarga, office is directed to send the file to Circuit Bench, Gulbarga.

DVSKJ:/KNKJ: 21/1/2009

This is an appeal u/s 54 of the Land Acquisition Act, 1894 by the land owner whose lands had been acquired by the State and who is not satisfied with the compensation even as determined by the reference Court.

2. The appeal had been filed at principal Bench at Bangalore on 26/2/2007 the only seat of the High Court then. The Office having noted that there were certain defects in presentation of the appeal and learned counsel for the appellant having not complied with the same within the permuted time, the matter had been listed before the Court for orders.

3. This court in terms of the order dated 2.8.2007 had while granted four weeks time to the appellant to rectify the defects, had further ordered that in the event of non-compliance the appeal shall stand dismissed without reference to the Bench.

4. The order having taken effect, two interlocutory applications had been filed on behalf of the appellant, one praying for condonation of delay in filing the application for recalling the order of dismissal and the other application for recalling.

5. These applications were ordered in terms of the order dated 3.10.2008 on terms directing the appellant to pay cost of Rs.250/- on each application and the amount to be remitted to the mediation center at Bangalore within four weeks therefrom and the Bench further noticed that the matter is relating to circuit Bench at Gulbarga, registry was directed to send the file to the circuit Bench at Gulbarga and that is how the matter has come up for further orders today before the circuit Bench at Gulbarga with the registry indicating that the appellant has not produced any receipt or acknowledgement for having remitted a sum of Rs.500/- with the mediation center.

6. When the matter was called, there was no representation for the appellant. We notice that the learned counsel who had filed power for the appellant M/s. Sangamesh G. Patil and A.C. Balraj are counsel practicing at Bangalore and may not be aware of the developments here in the circuit Bench.

7. The appellant had engaged a counsel and the counsel was representing the appellant before the principal Bench at Bangalore and with the matter having been transferred to the circuit Bench at Gulbarga, without notice to the appellant and even in the absence of the learned counsel for the appellant, neither the appellant nor counsel for the appellant, may be aware of the developments that this matter has been directed to be transferred to the circuit Bench at Gulbarga.

8. With no representation for the appellant, the only course of action that will be left for us now will be to dismiss the appeal for non-prosecution.

9. In the interest of justice, we do not purpose to take such course of action as it will virtually amount to penalizing the appellant for no fault of his. In fact, we notice that the appellant had paid court fee of Rs.25.000/- on presentation of this appeal

10. In the circumstances, we deem it fit to direct the registry to re-transfer this appeal to be listed only before the principal Bench at Bangalore and the matter to be decided at the principal Bench at Bangalore.

11. Ordered accordingly.

NKJ: and ANVGJ: 21/7/09

Learned counsel for the appellants produces the receipt for having paid Rs.500/- the cost, to the Mediation Centre.

It is further submitted that the matter is arising out of Bijapur and therefore the same is to be transferred to Circuit Bench at Gulbarga.

As per the request of the appellants, the matter is ordered to be transferred to Circuit Bench, Gulbarga.

DVSKJ: and NAJ: 17/11/2009

Though for want of representation and due to non-prosecution of the appeal the appeal can be dismissed, as dismissing an appeal for the dereliction of duty on the part of the Advocate, who accepted the engagement to appear for the appellant can only cause possible in-justice to the appellant and embarrassment to the counsel, instead of dismissing the appeal for non-prosecution, this Court in terms of the Order dated 21.01.2009 directed the appeal to be listed before the Principal Bench at which place it is said that the learned counsel had filed power for the appellant and is practicing and in terms of this Order the appeal was listed before the Principal Bench at Bangalore on 21.07.2009.

2. The order sheet of this Court on 21.01.2009 reads as under:

xxx (Already extracted above)

3. As per this order matter was retransmitted to the Principal Bench at Bangalore. However when the matter was listed at the Principal Bench at Bangalore on 21.07.2009, The order sheet of this Court on 21.07.2009 reads as under:

4. Appeal is listed before us today at the Gulbarga Circuit Bench. The cause list indicates that apart from not taking steps to bring on record the LRs of the appellant, who himself has died and in fact the appeal does not survive as the appeal abates on the death of the appellant, if no legal representative is keen to come on record and prosecute the appeal within the time permitted in law and the abatement in fact operates in law and this Court has to only record the developments to give a quietus to the appeal for the purpose of record, we nevertheless would like to give one more opportunity, so that the Advocate who had appeared for the appellant and who had filed Vakalath for the deceased appellant, can come and make any submission if he so deems to fit in the matter particularly as at his specific request this appeal is for the second time retransmitted to this Circuit Bench at Gulbarga, and as Sri S. Sharanabasappa K Babashetty -Advocate, friend of Sri. Sangamesh G Patil submits that Sri Sangamesh G Patil is even now practicing at Bangalore and to enable the learned counsel to appear before this Bench and to ensure necessary steps in the appeal, we deem it proper to adjourn this matter to next week as otherwise it is

inevitable we may have to refer the matter to the Bar Council with a recommendation that the counsel has thoroughly failed in discharging his professional responsibilities.

5. List the matter on 25.11.2009 for further orders regarding compliance of the deficiencies, noticed by the registry and as indicated in the cause list

13. In the meanwhile, it appears that the deficit court fee of Rs.25,592/- had been paid on 23.11.2009 and the Registry noticing this development listed the matter on 25.11.2009.

14. It is with this background and in this state of affairs, appeal was listed before this Court on 25.11.2009 for orders on the memo filed by Sri Sangamesh G Patil, Advocate, who had filed the appeal in the beginning and for non-compliance with the deficiencies pointed out by the registry particularly non payment of a deficit Court Fee of Rs.25,592/-. The Registry also had noticed [though wrongly] that no application had been filed for bringing LRs., of the deceased appellant on record. [As the present Counsel appearing for the appellants Sri K Anand Kumar, sought for a week's time for ensuring necessary compliance with the other requirements also, the matter was directed to be listed on 2.12.2009 for orders on memo for retirement. Accordingly, the matter was listed on 2.12.2009.

15. Noticing the memo for retirement filed by the erstwhile Counsel Sri Sangamesh G Patil, following order came to be passed on 2.12.2009:

DVSKJ: and KNKJ: 02.12.2009

ORDER ON MISC.CVL. 154245/2009 FOR PERMISSION TO PROSECUTE THE APPEAL

This is an application filed by the persons who claim to be the heirs of the deceased appellant-Mallikarjun Bhimappa Garasangi, seeking permission of the court to prosecute the above appeal directed against the common judgment dated 18.6.2003 passed in LAC No. 149/2000 by the second Addl. Civil Judge (Sr. Dn.) Bijapur along with LAC Nos. 150-151/2000. The applicants are seeking enhancement of the compensation paid in respect of the lands which were acquired by the State Government for a public purpose and being not satisfied with the quantum of compensation as awarded by the Civil Court in Reference under Section. 18 of the LA Act.

2. On this application, we direct issue of notice to the respondent and the learned Government Advocate is also directed to take notices in addition to the notices through the court. We notice, there is another memo listed for orders namely a memo for retirement filed by the erstwhile counsel Sri Sangamesh G Patil indicating that the client has taken back his file after the establishment of the Circuit Bench for engaging another counsel because the earlier counsel continue to practice at Bangalore and has also given NOC along with the case papers, therefore, seeks to retire from the case.

3. Memo is filed before the circuit bench, Gulbarga. In the normal course, we should have simply ordered this memo but we found certain strange things that had occurred in this appeal particularly the dereliction of duty on the part of the erstwhile counsel's professional conduct and disservice to a litigant public. Therefore, we defer passing orders on the memo of retirement and as of now, permission to retire is refused. We direct the learned counsel who has filed the memo and who has filed the vakalath for the appellant earlier to appear before this Court and to make submissions on the memo for retirement as we are not convinced to order on memo in the wake of haphazard manner in which the erstwhile counsel has conducted this case on behalf of the appellant. Though in the valuation column of the memorandum of appeal it is stated that the appellant has paid an initial court fee of Rs.25,612/- on the memorandum of appeal, we notice that no such court fee had ever been paid and only court fee of Rs.20/- had been paid on the appeal memo. It is only on 19.11.2003 court fee of Rs.25,612/- has been paid as deficit court fee and on 23.11.2009 the receipt was filed before this Court by the present counsel Sri Anand Kumar along with vakalath.

4. The counsel who had filed power did not bother to pay the proper court fee, but on the other hand incorrectly indicated in the valuation part of the memorandum of appeal that a sum of Rs.25,612/- is paid as court fee in terms of schedule 1 of the Karnataka Court Fees and Suits Valuation Act, 1958 and this is nothing short of a misrepresentation and fraudulent act before the court.

5. Mr. Anand Kumar, learned counsel who is appearing for the appellant submits that the court fee now paid was given to him in the form of a DD for this amount by Sri S.M. Chowdary, Advocate who had appeared for the claimant before the Reference Court.

6. Be that as it may, we would like to ascertain as to whether the appellant had imparted with the court fee when the appeal was presented and if so why there is an inordinate delay of more than 2 1/2 years in paying the proper court fee before this Court to prosecute the appeal.

7. Unless the earlier counsel appears before this Court and explains the circumstances, we are inclined to refer the matter to the Bar counsel for taking stringent action against the erring and negligent counsel who has willfully failed in discharging his professional responsibilities and because of such irresponsibility and negligence of counsel, a poor and ignorant litigant should not suffer and a legitimate entitlement towards possible proper compensation is deprived of. We also direct the appellant to be present before the court to clarify the development so that we can ascertain the development from the appellant also. Therefore, Mr. Anand Kumar, learned counsel now appearing for the appellant to ensure the presence of the appellant on 11.12.2009. It is open to Mr. Sangamesh G. Patil who has filed vakalath earlier for the appellant to explain for the gross dereliction of duty.

List the matter for further orders on 11.12.2009.

16. Further development on 11.12.2009 was the appearance of Mr Deshmukh, learned Counsel said to be appearing on behalf of Mr Sangamesh G Patil, which was recorded as per our order dated 11.12.2009, which reads as under:

DVSKJ and NAJ: 11.12.2009

Mr.Deshmukh, learned advocate appears before the Court and pleads on behalf of Mr.Sangamesh G.Patil, the erstwhile advocate, who had been directed to offer his explanations for the careless manner, in which the case has been conducted, virtually leading towards dismissal of the appeal for default, in which event, the appellants would have suffered without being able to present their version before this Court for getting enhanced compensation in respect of their lands acquired for public purpose.

2. Mr.Deshmukh draws our attention to the affidavit sworn to by Mr.Sangamesh G.Patil and submits that further proceedings in terms of the order dated 2.12.2009 should be dropped.

3. Mr.Anand Kumar, the present counsel for appellant submits that he has ensured the presence of the appellant before this Court Amongst four legal representatives of deceased appellant, it is the fourth legal representative, namely Mr.Kumar MM. Garasangi who is aged 23 years is present before this Court. He is not in a position to throw much light as to the state of affairs when the case was entrusted to learned counsel Sri.Sangamesh G.Patil.

4. Be that as it may, we are unable to appreciate the submission made by Mr.Deshmukh, on behalf of Mr.Sangamesh G.Patil, who was required to explain before this Court his conduct particularly in the wake of we having proposed to refer the matter to Bar Council for gross dereliction of duty on his part in conducting the case of a litigant whose brief he had accepted.

5. The legal profession is known as a noble profession and every advocate is a trustee for the case of his client and he should neither become beneficiary himself nor abandon his responsibilities as a trustee, who is required to protect the interest of his client. In fact, a trustee renders services in favour of the beneficiaries without any remuneration whereas an advocate is remunerated for services rendered to his client.

6. The affidavit reads as under:

At the outset, I respectfully submit that, there is no dereliction of duty towards the appellants in conducting the above case when the said case was pending before the Hon'ble High Court of Karnataka, at Bangalore. Further. I have not conducted the case in haphazard manner shown any negligence either in filing or conducting the above case earlier.

4. That, in the year 2007, one Mr.S.M.Choudhary, advocate practising at Bijapur came to Bangalore along with Sri.Kumar M.M.Garsangi and handed over case

papers pertaining to common judgment passed in LAC.No.149 of 2000 and connected matters dt: 18.6.2003 and requested for preferring an appeal for enhancement of the compensation on account of acquisition of the land belonging to him and others for public purpose. Myself on going through the case papers, drafted the appeal and also prepared the valuation slip and thereafter, on noting that, a sum of Rs.25,612/- is required to be paid as Court fee on the above appeal memorandum called upon the appellant who had come to Bangalore for paying the said Court fee. At that time, the learned counsel, Sri.S.M.Choudhary, who was present informed me that, they will immediately arrange and send the court fee also my professional fees filing the above appeal. And, on the said date, no fees or even my professional fees or any kind of amount was paid even to meet the expenditure in preferring the appeal.

5. After three days, the learned counsel, Sri.S.M.Choudhary called me through telephone from Bijapur and informed that, the appellants were not in a position to immediately arrange the above amount towards payment of Court fee on the said appeal and further, requested me to file the appeal before this Hon''ble Court in order to avoid further delay as delay has already taken place to prefer the appeal. On the said instructions, myself on paying minimum Court fee of Rs.20/- from my pocket and other miscellaneous expenses got filed the above case at the registry of the Hon''ble Court at Bangalore. However, by oversight and due to bonafide mistake myself could not strike out the word. Court fee paid in the valuation slip since, the valuation slip was earlier prepared along with appeal memo.

6. Thereafter, the office of the Hon''ble High Court at Bangalore, on scrutiny of the case papers raised several objections and one of the objections regarding payment of deficit Court fee. On gaining knowledge of the said office objections, several correspondences took place and thereby, the appellants and even the learned counsel, Sri.S.M.Choudhary were informed for making payment of Court fee on the said appeal. But, the appellants did not paid the said Court fee either directly to the Hon''ble Court nor handover any amount in my hands for making or deposit the Court fee on the above appeal.

7. The above appeal was listed before the Hon''ble Court for noncompliance of office objections and when it was listed, myself appeared and prayed for grant of time. The Hon''ble Court passed pre-emptory order and granted four weeks time to comply the office objections and if not complied, the matter to stand dismissed for non prosecution. Thereafter, myself immediately intimated the appellants and even the learned counsel. Sri.S.M.Choudhary, about the above order passed by the Hon''ble Court. But, inspite of it, the appellants did not made arrangements for payment of Court fee and as a result, the above appeal came to be dismissed.

8. Subsequently, the appellants made arrangements for recalling the order of dismissal for non-prosecution and for restoration. On the said applications, the Hon''ble Court restored the appeal and transferred the case papers to the Circuit

Bench at Gulbarga.

9. Now, it is learnt that, the appellants have engaged the services of learned counsel. Sri.Anand Kumar and got paid the deficit Court fee through. Sri.S.M.Choudhary. Advocate. Bijapur.

10. Further. I respectfully submit that, as I am appointed as Government Pleader and practising at Bangalore and as my name was appearing in the cause list alongwith Mr.Anand Kumar, Advocate whenever the above appeals were listed before the Hon''ble Court. Myself got filed the memo for retirement from the above case.

11. That, in view of the above facts and circumstances, I have not acted irresponsibly in conducting the above appeal before the Hon''ble High Court of Karnataka at Bangalore. I have not failed in discharge of my profession duties in respect of the above case. Further, no stringent action can be initiated against me in handing the above appeal at Bangalore.

In our opinion, the affidavit as aforesaid is neither a true statement of facts nor bonafide explanation warranting us to close the matter at this stage so far as the proposed action against the erstwhile advocate is concerned.

7. Mr.S.V. Deshmukh, learned advocate, who has taken up the cause of his erstwhile colleague Sri.Sangamesh G.Patil, on his behalf would submit that Mr.Sangamesh G.Patil is unable to appear before this Court today as his mother is indisposed and he is busy attending to her.

8. On our query, Mr.Deshmukh, submits that Patil's mother is at Bijapur. It is not known whether Mr. Sangamesh G.Patil, is at Bijapur or at Bangalore or at Gulbarga, The matter requires further verification.

9. List this matter on 14.12.2009. If any further worthwhile true explanation is forthcoming from the erstwhile advocate Mr.Sangamesh G.Patil, we are inclined to accept it and pass orders on the merits of the same.

17. It is with this background and in this state of affairs, the appeal is listed before us for orders regarding Misc.Civil. 154245/2009 for permission to prosecute the appeal and the affidavit filed by Sri Sangamesh G Patil, learned Counsel.

18. Mr Sangamesh G Patil, learned Counsel appeared before us today and has drawn our attention to his affidavit dated 5.12.2009, which is before us on record and has asserted the contentions of this affidavit, in spite of our pointed queries and the very obvious anomalies with regard to the statement made in this affidavit and also with the affidavit blissfully vague and bald with regard to the particulars more so with regard to the dates on which the events had occurred etc..

19. Sri Sangamesh G Patil, learned Counsel submitted before us, that he has nothing further to add apart from the contents of the affidavit and has prayed for

proceeding to orders not only on the merits of the appeal but also on the contents of the affidavit Mr.Sangamesh G Patil asserts that he had conducted the case in a most diligent manner, there was no dereliction of duty on his part towards the appellants in conducting the case; that he has never conducted the case in a haphazard manner or in any negligent manner either in filing or in conducting the appeal.

20. To say the least, the affidavit only contains inaccurate and incorrect assertion virtually amounting to perjury as Mr.Patil is making such assertion on oath before this Court and that by itself constitute cause for not only for possible offences punishable under the penal code, but also for action under the Contempt of Court Act.

21. But that apart, we were more keen on finding out if there is any supporting material forthcoming in the affidavit of Mr.Patil, which can in any manner enable us to accept the explanation offered in the affidavits supporting the application filed u/s 5 of the Limitation Act for seeking condonation of delay in preferring the appeal. Unfortunately, for the appellants we do not find any material in this affidavit apart from the affidavit of the second appellant sworn to on 24.2.2007, which is the support for the application u/s 5 of the Limitation Act.

22. In this state of affairs, we find it rather difficult to accept that there is any bonafide circumstances or sufficient cause forthcoming even from a combined reading of these two affidavits, to condone the delay and take up the appeal on its merits.

23. We are very displeased even annoyed at the way in which the earlier affidavit of the year 2007 is filed without any particulars of dates and events and trying to pass on the blame on an Advocate, who had died before the year 2006 [even that date is not forthcoming in the affidavit] and this is sought to be projected as the cause for preferring the appeal only in the year 2007 as the papers had earlier been entrusted to the deceased Advocate in the year 2004 by the local Advocate Mr.Chowdhary and the impression of the local Advocate Mr.Chowdhary and of the appellants was that the appeal had already been filed and was pending before the High Court, whereas no such appeal has ever been filed.

24. The Court Fee aspect which is an important aspect particularly unless the entire Court Fee is paid, the appeal does not become tenable for examination is conspicuously absent in the earlier affidavit and it is not even mentioned or asserted whether any Court fee had been handed over to the erstwhile advocate to the present the appeal by the local Advocate who is said to have been entrusted the brief for filing the appeal.

25. Ultimately, we find that the Court Fee is paid only on 23.11.2009 though the memorandum of appeal asserted that it had been paid along with the memorandum of appeal on 26.2.2007, which is not a fact, but is a clear misrepresentation even amounting to a falsehood and a lie. We have noticed that there is absolutely no worthwhile explanation not even a sense of remorse on the

part of Mr.Sangamesh G Patil, who was the architect of the memorandum of appeal, application for condonation of delay and the affidavit of the parties. On the other hand, he has brazenly asserted before us that he has presented the appeal in a most and befitting manner acting in professional way; that there is no dereliction of duty on his part; that he has not conducted the appeal in a haphazard manner, which are all far from truth and far from reality, Even the presentation was not at all in order, deficient presentation coupled with misrepresentation and false-play.

26. As though this was not sufficient, the appeal which would have been only by the successors of the deceased Mr.Mallikarjun Bhimappa Garasangi, in their own right as successors in interest of the estate of the deceased claimant and after seeking permission of this Court, was presented, as though it is in appeal by a dead person through his legal heirs etc.,

27. Though Sri K Anand Kumar, the current Counsel [A strange and sorry case of there being a past counsel, middle counsel and a current counsel, all of whom appear to have thoroughly failed in their professional responsibilities] submits that an application seeking permission of this Court to prosecute the appeal by the successors to the interest of the estate of the deceased Mallikarjun Bhimappa Garasangi, is now filed. That in no way makes the presentation of the appeal a valid or proper presentation to a defective presentation and infact no appeal in the eye of law. An invalid presentation which is not a proper appeal, does not arrest the running of limitation and what would have been a delay of 1258 days on 26.2.2007 has now snowballed into a delay of about 2370 days as on today and by any stretch of imagination, this is an inordinate delay and with no worthwhile explanation forthcoming, no sufficient cause having been demonstrated before the Court to condone such an inordinate delay, we have no choice, but to dismiss the appeal on the ground of limitation itself as the appeal is hopelessly time barred.

28. The matter should have ended with this, but we have been left with a bitter feeling, sadness and remorse. Feeling sad due to the levels of de-generation to which the profession has sunken and at such incompetence on the part of the professionals affecting poor, ignorant, illiterate litigants. Though Mr.Sangamesh G Patil, learned Counsel has asserted before us that the appellants are well educated and were aware of the facts and circumstances, while that can only add to their woes for not explaining the delay, that is not an excuse for the Counsel. No litigant can be expected to know the legal requirements in law, which is the responsibility of a lawyer and no blame can be placed at the doors of the litigants for such deficiencies or failures.

29. It is only because a litigant is unable to cope up with the intricacies of the law and niceties of law and the procedure that compells them to avail the services of a professional Advocate, and if the professional has failed in his duties, the consequences be falls the poor litigants, who come to the Court, availing the services of a professional with hope and expectations, placing

complete trust on the Advocate that they will deliver goods for them. Unfortunately it has not happened in this case.

30. While we reserve liberty to the appellants to proceed against the lawyers, who had handled the matter for them at different levels and at different stages, if dereliction of duty on their part has deprived the appellants of their legitimate entitlement in law and for such purpose, date of this order constitutes the starting point for computing the period of limitation and for claiming damages on the failing Counsel, we further deem it proper to refer this matter to the Bar Council, the professional body to examine whether there is any dereliction of duty on the part of any of the Counsel, who have appeared in this matter at the different stages and also on the part of the local Advocate Mr.Chowdhary, who had appeared and conducted the matter for the claimant-owner before the trial Court, to take such action as is warranted in law and after giving all of them an opportunity not only to ensure compliance with the requirements of principles of natural justice, but also to comply with the procedure envisaged under the Advocates Act, 1961 and the Rules framed thereunder.

31. Additional Registrar General is directed to forward copy of this Order to the Secretary, Bar Council of Karnataka to enable the Bar Council to take follow up action and also to make available the copies of the relevant necessary documents as is sought for by the professional body.

32. Appeal is dismissed.