

(2012) 09 KAR CK 0200

In the Karnataka High Court

Case No : Misc. Cvl. No. 109908 of 2010 and R.F.A. No. 3106 of 2010

Smt. Basavannevva Bhajantri

APPELLANT

Vs

Sri. Mahadevappa Budnayak and Others

RESPONDENT

Date of Decision : 10-09-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (2012) 09 KAR CK 0200

Hon'ble Judges : N.K. Patil, J;B.V. Pinto, J

Bench : Division Bench

Advocate : M.H. Patil and Sri. G.S. Hulmani, for the Appellant; G.R. Andanimath and Sri. P.S. Bendigeri, Advocate for R1 and R12, R2-11, 13 and 14- served and unrepresented, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—This regular first appeal is filed by the appellants/plaintiffs u/s 96 of CPC 1098, against the judgment and decree dated 17.11.2009 passed in O.S.No. 331/2004 on the file of the Principal Civil Judge (Sr.Dn.) Hubli, dismissing the suit filed for partition and separate possession. Along with the appeal, learned counsel for appellants has filed Misc. Cvl. 109908/2010 for condoning the delay of 260 days in filing the appeal.

2. There is an inordinate delay of 260 days in filing the appeal. The appellants have explained the said delay in the affidavit filed along with the application stating that, the suit in O.S. No. 331/2004 was posted for evidence on 3.3.2009, they led the evidence in the form of examination-in-chief by way of affidavit and the case was adjourned for cross examination. Thereafter, their counsel informed them that he will inform the next date of hearing and they have not received any communication from their counsel. Further, it is stated that, they engaged another counsel to enquire the status of the case in the month of January 2010 and he informed that the suit was dismissed on 17.11.2009. Thereafter, they placed the matter before their well wishers and also enquired with the persons

who are acquainted with the legal knowledge and in turn they suggested them to prefer this appeal. Further, it is stated that they are agriculturist and due to sowing season it was not possible for them to make financial and other arrangements to prefer the appeal well within the time as they are residing in different places. During these process there was a delay in filing the appeal, which is neither intentional nor deliberate. If the said delay is condoned, no loss or hardship will be caused to the respondents and in the alternative, if the same is denied, they will be put to great hardship and inconvenience and may lose their right over inherited property. Therefore, they prayed to condone the delay in filing the appeal.

3. After careful perusal of the statements made in paras-2 to 6 of the affidavit as referred above, it emerges that there is an inordinate delay of 260 days in filing the appeal and the appellants are bound to explain each days delay by assigning cogent and valid reasons. But the reasoning given by the appellants for condoning the delay is in omnibus nature and are not sufficient and much credibility cannot be given to the same. Therefore, the application filed by the appellant for condonation of delay is liable to be dismissed.

4. However, in the interest of justice and equity, we have gone through the judgment and award passed by the Trial Court. It is not in dispute that, the suit filed by the appellants in OS No. 205/2001 was dismissed for default and the Misc. petition filed to restore the same also came to be dismissed. Therefore, in view of the suit filed by the plaintiffs for partition was already dismissed for default, there is no cause of actin for the appellants to file fresh suit as rightly observed by the Trial Court. Therefore, even on merits also, we do not find any justification or good grounds to entertain the relief sought by the appellants in the appeal. For the foregoing reasons, Misc.Cvl. filed by the appellants for condoning the delay is dismissed and consequently, the appeal filed by the appellants is also dismissed on the ground of delay and laches as also on merits. Ordered accordingly.