

IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD

DATED THIS THE 31st DAY OF MAY 2012

BEFORE

THE HON'BLE MR.JUSTICE S.N.SATYANARAYANA

REGULAR SECOND APPEAL NO.5356/2011

BETWEEN:

Smt. Andanamma
W/o late andanaiah Vastrad
Aged about 75 years,
Occ: household
C/o B.V. Chowki Math
Prashant Nagar, Vidhan Soudh
Quarters, 3rd cross, 1st block
House No.4, Magadi
Housing Board colony, Bangalore
Now at House No.18, 5th cross,
ICEC road, Nagarabhavi
Bangalore 560 072.

... Appellant

(By Sri. B. SHARANAVASAWA AND SRI A.B. PATIL, Advs.)

AND:

1. Sri. Basalingayya
S/o Rudrayya Vastrad,
Aged about 80 years,
Occ: Rtd Govt. servant
Now at R/o State Bank of India
Building Rajanagar,
Hubli, tq. Hubli, Dist. Dharwad 580 001.

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2. Shantabai, w/o Shantaveerayya
Aged about 75 years.
Occ: household
3. Shekharayya, S/o shantaveerayya
Aged about 61 years, Occ: service
4. Umesh, S/o Shantaveerayya
Aged about 60 years,, occ: service.
5. Basavaraj, S/o shantaveerayya,
Aged about 52 years, occ: service.
6. Andanayya, S/o Shantaveerayya
Aged about 45 years, occ: service.
7. Annakka, W/O Bangarimath S.
Aged about 40 years, occ: household

Respondents 2 to 7 are resident of 14th block,
Behind municipal double building,
Azad nagar, dandeli, Tq. Dandeli,
Dist. U.K. 572 309.

8. Thippanna, S/o Balappa arer
Age 55, occ: agriculture
R/o Shiragumpi village
Tq. Yelburga, dist. Koppal 583 231.
9. Sri. Kalakanagouda
S/o Guinagouda Police Patil,
Age 55, occ: agriculture,
R/o Sankanoor, tq. Yelburga,
District Koppal, 583 231.

... Respondents

(By Sri. Mahesh Wodeyar, Adv. for R-1
Sri. Y. Lakshmikant Reddy, Adv. for R2 to R7. R8 & R9 sd.)

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This Regular Second Appeal is filed under Section 100 CPC against the judgment and decree dated 19.03.2011 passed in R.A.No.73/2009 on the file of the Presiding Officer, Fast Track Court II Koppal dismissing the appeal filed against the judgment and decree dated 30/07/2008 passed in O.S.No.25/2006 on the file of the Civil Judge(Sr.Dn) Yelburga, decreeing the suit filed for partition and separate possession and injunction.

This Regular Second Appeal coming on for admission this day, the Court delivered the following:

J U D G M E N T

The second defendant in O.S.No.25/2006 on the file of the Civil Judge (Senior Division), Yelburga, has come up in this second appeal.

2. The facts leading to this second appeal are as under:

The suit in O.S.No.25/2006 was filed by first respondent herein against his brother Shantaveerayya-original defendant for the relief of partition and separate possession of his 1/3rd share in the suit schedule properties.

3. During the pendency of the said suit, the brother of the original plaintiff died. In his place, his legal heirs are brought on record and so far as second respondent is concerned,

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she is none other than the sister of the plaintiff and original defendant. In the said proceedings, after recording of evidence and appreciation of the oral and documentary evidence available on record and the pleadings, the trial Court decreed the suit in favour of the plaintiff granting 1/ 3rd share to him. The said judgment and decree is accepted by every one except second defendant who filed an appeal with the delay of 294 days. The said appeal in R.A.73/2009 was disposed of by the lower appellate Court rejecting the application filed by the appellant in the said appeal who is also appellant in this second appeal, on the ground that sufficient ground are not made out to condone the delay of 294 days in filing the appeal and consequently rejected the appeal. Being aggrieved by the same, this second appeal is filed.

4. Heard the counsel for the appellant and as well as the counsel appearing for the contesting respondent-plaintiff in the original suit.

5. On going through the judgment and decree passed by the Courts below, this Court find, there is no justifiable

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reason to interfere with the finding of the trial Court inasmuch as the second defendant who is party to the suit has failed to establish that the plaintiff has no right to seek share in the joint family properties of which he was one of the members and further it is seen that in first appeal filed by her, the same is filed with an inordinate delay of 294 days which she has failed to substantiate. In that view of the matter, the lower appellate Court has rightly rejected the said application. This Court find there is no substantial question of law that arises for consideration in this appeal against the finding of both the Courts below.

In that view of the matter, this second appeal does not merit admission. Accordingly, the same is dismissed. Since the second appeal is dismissed, Mis.Cvl.104539/2011 filed for stay do not survive for consideration. Hence, it stands disposed of.

**Sd/-
JUDGE**

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