

IN THE HIGH COURT OF KARNATAKA  
DHARWAD BENCH

DATED THIS THE 30<sup>TH</sup> DAY OF JUNE 2020

BEFORE

THE HON'BLE MR.JUSTICE N.S. SANJAY GOWDA

RSA NO.100031/2014 (DEC)

BETWEEN

SHRI BALESH ADIVEPPA AMATI  
AGE: 58 YEARS, OCC: AGRICULTURE  
R/O. BASSAPUR-591122.  
TQ: HUKKERI  
DIST: BELGAUM

... APPELLANT

(BY SMT. S P.PATIL, ADVOCATE)

AND

1. SHRI HANAMANTH RAYAPPA AMATI  
AGE: 70 YEARS, OCC: AGRICULTURE  
R/O. BELAVI-591309.  
TQ:HUKKERI, DIST: BELGAUM
2. SHRI ASHOK VENKAPPA NAIK @ AMATI  
AGE: 47 YEARS, OCC: SERVICE  
R/O. NAIKWADI-591307.  
TQ: GOKAK, DIST: BELGAUM
3. SMT. AKKAWWA D/O. RAYAPPA AMATI  
AGE: 72 YEARS, OCC: HOUSEHOLD WORK  
R/O. ASHOK NAGAR,  
BEHIND SHOOTING HOUSE, NIPPANI-591237.  
TQ: CHIKKODI, DIST: BELGAUM
4. SHRI HANAMANT BHIMAPPA AMATI  
AGE: 62 YEARS, OCC: AGRICULTURE  
R/O. BASSAPUR, TQ: HUKKERI  
DIST: BELGAUM.

5. SHRI HONNAPPA BASAPRABHU AMATI  
AGE: 32 YEARS,  
OCC: AGRICULTURE  
R/O. BASSAPUR-591122.  
TQ: HUKKERI, DIST: BELGAUM
5. SMT. GANGAWWA  
W/O. NAGAPPA SANADI @ DUNDAPPAGOL  
SINCE DECEASED BY HER LR<sub>s</sub>
- 6A. SMT. SATTEVVA  
D/O. NAGAPPA SANADI @ DUNDAPPAGOL,  
AGE: 32 YEARS, OCC: AGRICULTURE  
R/O. MANNIKERI-591227.  
TQ: & DIST: BELGAUM
7. SMT.BALAVVA W/O. NINGAPPA ZORALI  
AGE: 65 YEARS,  
OCC:HOUSEHOLD WORK  
R/O.ISLAMPUR-591243.  
TQ:HUKKERI, DIST: BELGAUM

... RESPONDENTS

THIS RSA IS FILED UNDER SECTION UNDER SECTION 100 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 17.01.2011 PASSED IN R.A.NO.16/2007 ON THE FILE OF THE PRESIDING OFFICER, FAST TRACK COURT, HUKKERI, DISMISSING THE APPEAL, FILED AGAINST THE JUDGMENT AND DECREE DATED 23.03.2007 AND THE DECREE PASSED IN O.S.NO.44/2002 ON THE FILE OF THE CIVIL JUDGE (JR.DN) HUKKERI, PARTLY DECREERING THE SUIT FILED FOR DECLARATION.

THIS RSA COMING ON FOR ADMISSION, THIS DAY, THE COURT, DELIVERED THE FOLLOWING:

JUDGMENT

1. The plaintiff is in second appeal.
2. There is a delay of 996 days in filing the appeal.
3. The plaintiff filed a suit for declaration that he had perfected his title by way of adverse possession and for consequential decree of injunction.
4. The Trial Court dismissed the prayer for declaration holding that the plaintiff had not proved that he was in possession adverse to the interest of the true owner. The Trial Court also came to the conclusion that, the admitted true owner Gangubai, had no legal heirs and the property would therefore have to go to the State by escheat as contemplated under Section 29 of the Hindu Succession Act.

5. The defendants being aggrieved preferred an appeal.

6. In the said appeal, the plaintiff filed cross-objections challenging the finding that the property would have to go to the State under Section 29 of the Hindu Succession Act.

7. The appeal filed by the defendants was dismissed by the Appellate Court.

8. The Appellate Court also dismissed the cross-objections preferred by the plaintiff. This order was passed by the Appellate Court on 17.01.2011. The plaintiff has preferred this appeal on 07.06.2014. There is, thus, a delay of 996 days.

9. In the affidavit filed in support of the application filed for condonation of delay, the plaintiff has stated as follows;

(3) My counsel obtained the certified copy of the judgment and decree passed by the courts below and handed over to me for the purpose of preferring the appeal before this Hon'ble Court. In the mean time I fell ill as I was suffering from chronic fever and the Doctor advised me to take complete bed rest. Therefore, I could not come over to Belgaum and hand over the papers to my counsel to prefer the second appeal. After recovery from the illness I went to Goa to search my livelihood and also to earn money. My wife and children were residing at Basapur when I was in Goa. In the last week of December 2013 I came back to Basapur after earning money and thereafter I came over to Belgaum and handed over the papers to prefer the appeal. Without any further loss of time I have preferred this appeal. In the process there is a delay of 996 days in preferring the appeal.

(4) I have not deliberately caused delay in preferring the appeal. Due to my illness and financial constraints I could not file this appeal in time. The delay caused is neither

deliberate nor intentional but the same is a bonafide one. I have got every chance of success in the present appeal. In case the delay is condoned no loss or hardship would be caused to the respondents. On the other hand I will be put to heavy and irreparable loss if the delay is not condoned. Therefore, the accompanying application may kindly be allowed.

10. In my view, the cause stated in the affidavit cannot be construed as sufficient cause which prevented the appellant from preferring the appeal within time. As could be seen from the affidavit, the appellant claims that he had contracted fever constraints and had been advised to take complete bed rest and thereafter he had gone to Goa to eke out his livelihood. The appellant does not dispute the fact that he was aware of the order of the Appellate Court. The appellant being aware of the dismissal of his cross-objections has admittedly chosen not to take any steps to prefer an appeal for nearly 3 long years.

11. In my view, there is absolutely no cause shown for condoning the inordinate delay of 996 days in filing the appeal. IA.No.1/2014 is dismissed. As a consequence, the second appeal shall also stand dismissed.

In view of the dismissal of the appeal, the other interlocutory applications would also not survive for consideration.

Sd/-  
JUDGE

msr