2025 INSC 53

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 317 OF 2025
(@Petition for Special Leave to Appeal(C)No.9719/2020)

H.GURUSWAMY & ORS. **….APPELLANTS(s)**

VERSUS

A. KRISHNAIAH SINCE DECEASED BY LRS. **….Respondent(s)**

O R D E R

1. **This appeal arises from the judgment and order passed by the High Court of Karnataka at Bengaluru dated 30.01.2020 in Misc. First Appeal No. 7220 of 2014 filed under Order 43 Rule 1(d) of the Civil Procedure Code, 1908 (for short, "the CPC") by which the order dated 05.08.2014 passed in Misc. Case No. 223 of 2006 on the file of the XIV Additional City Civil Judge, Bengaluru rejecting the application filed under Order 9 Rule 13 CPC came to be set aside and thereby the appeal was allowed.**

2. **The facts giving rise to this appeal may be summarised as under:**

a. The suit schedule property bearing Sy. No. 1/11 situated at Byrasandra, Bangalore, Karnataka measuring 45 yards

East to West and 55 yards North to South was purchased by one Venkatappa in the year 1916. Thereafter, the said Venkatappa sold a portion of the suit property and retained the balance portion measuring 45 yards East to West and 27.5 yards North to South. Vide a registered family partition, the suit schedule property came to be divided between Venkatappa and Muniga @ Chikonu (Brother of Venkatappa) wherein Venkatappa had received 29 Ankanas along with 1/3rd share and Chikonu had received 10 Ankanas of house along with 2/3rd share.

b. **A suit for injunction being O.S No.615/1960 came to be filed by Venkatappa against his family members which came to be subsequently withdrawn on or about 14.06. 1965.**

c. **Initially one C.R. Narayana Reddy had filed a suit for specific performance against the appellants herein being O.S. No. 33/1971 with respect to the land along with a house in Byrasandra Village before the Court of the Civil Judge, Civil Station, Bangalore which came to be disposed of *vide* Judgment and Order dated 30.08.1971 with a direction to the appellants herein to refund the earnest amount that had been paid to them.**

d. **The deceased Respondent No.1 herein namely Sri. A.Krishnaiah had impleaded himself as Defendant No. 14**

in O.S No.33/1971 claiming to have purchased the suit property from the Defendants No.3 to 13 respectively in O.S. No.33/1971. The Civil Court had recorded a categorical finding that the conduct of the deceased Respondent No.1 did not seem to be *bona fide* and that the sale in his favour was hit by the doctrine of *lis pendens* and that the deceased Respondent No. 1 did not seem to be a *bona fide* purchaser and was not entitled to any relief with regard to the suit property.

e. **Thereafter on the very same cause of action, the deceased Respondent No. 1 filed O.S. No. 104/1972 seeking similar reliefs against the appellants. The said suit came to be dismissed on merits *vide* Judgment and Order dated 08.12.1975.**

f. **Despite failing in two rounds of proceedings and not challenging the Orders passed in O.S. No.33/1971 and O.S No.104/1972, the deceased Respondent proceeded to file yet one another suit for possession and other reliefs by way of O.S. No.603/1977 before the Court of the Civil Judge, Bangalore City. The said suit came to be eventually renumbered as O.S. No. 1833/1980.**

g. **The O.S. No.1833/1980 came to be dismissed on the first occasion for default in the year 1983. In lieu of the same, the Respondents herein had filed Misc. Petition**

No.1063/1984 seeking to restore the said suit which came to be allowed in the year 1984. Thereafter, the Defendant No.4 in O.S. No.1833/1980 namely Shri. Nagaraja passed away on 04.12.1999. The Respondents having come to know of the same and having been granted sufficient opportunities on 06.03.2000, 18.07.2000 and 22.08.2000 respectively, failed to bring the legal heirs of the Defendant No.4 on record as a consequence of which, the O.S. No.1833/1980 came to be dismissed as having stood abated *vide* Order dated 22.08.2000.

h. **The Respondents herein/Plaintiffs in their application for recall dated 06.03.2006 stated that the wife of the Deceased Respondent No. 1 namely Smt. Jayalakshmi G. who is one of the Respondents/Plaintiffs had been suffering from some ailment and had to be admitted in hospital on 09.02.2000. She also had to undergo Angioplasty on 27.09.2003 and that the Respondents came to receive the certified copy of the Order dated 22.08.2000 on 26.08.2005. However, thereafter, the Respondents proceeded to file applications under Order 22 Rule 4, Order 32 Rule 1 & 2 and Order 22 Rule 9 respectively before the Trial Court in O.S. No. 1833/1980 seeking to set aside the abatement and bring the legal heirs on record. However, the same came to be dismissed by way of**

Order dated 16.11.2005 with liberty to the Respondents to file an application for recall.

i. **Despite the above, the Respondents proceeded to challenge the Order dated 16.11.2005 before the High Court, in W.P No.26660/2005 which came to be dismissed as well.**

j. **It is only thereafter on 06.03.2006 that the Respondents proceeded to file an application for recall in Misc. Case No.223/2006 before the Trial Court. The Trial Court *vide* a detailed Order dated 05.08.2014 dismissed the Misc. Case No.223/2006 holding as under:**

a) that the rights of the deceased Respondent No.1 had already been decided much prior in the suit for specific performance in O.S. No.33/1971 itself wherein it had been held that the deceased Respondent No. 1 was not a *bona fide* purchaser and that a similar suit in O.S. No. 104/1972 which arose out of the same cause of action had also been dismissed on merits.

b) that all the Respondents are educated and there was no impediment for the Respondents to obtain the certified copies in O.S. No. 1833/1980 at the earliest point of time.

c) that the Respondents had failed to assign any sufficient cause for not filing the application till

2006 and moreover, the trial court noted that the cause shown by the Respondents also appeared to be doubtful. Furthermore, it was held that there is an inordinate delay of 6 years in filing the application for recall and the cause shown was insufficient.

d) that the Respondents despite having obtained the certified copies on 26.08.2005, had only filed the Misc. No.223/2006 on 03.06.2006 and the Respondents had failed to explain their delay in filing the petition.

e) that the suit itself is hit by *res judicata* as the matter in the suit in the present suit and that of O.S. No.33/1971 were one and the same wherein there were specific findings that the Deceased Respondent No. 1 was not a *bona fide* purchaser and was not entitled to any relief. The court also observed that the present application for recall was barred by limitation and furthermore, the suit in O.S. No.104/ 1972 had been dismissed on merits as well. That the Respondents had not approached the Court with clean hands and had abused the process of law.

3. **Being aggrieved with the above, the Respondents challenged the Order dated 05.08.2014 before the High Court in W.P No.7220/2014 wherein the High Court allowed the Writ Petition thereby condoning the delay of about 2200 days.**

4. **In such circumstances referred to above, the appellants are here before this Court with the present appeal.**

5. **Mr. Anand Sanjay M. Nuli, the learned Senior counsel appearing for the appellants submitted that the High Court proceeded to condone the delay of about 2200 days without adverting to any of the reasons assigned by the Trial Court while rejecting application filed for recall.**

6. **He submitted that the High Court by its impugned order could be said to have proceeded to revive a suit which had been instituted in the year 1977 i.e., a suit which had been instituted about 48 years ago and is still at the stage of leading evidence.**

7. **He submitted that there is a delay of six years in filing the application for recall itself. He pointed out that this is the second instance that the suit came to be dismissed due to negligence and callous attitude on the part of the respondents.**

8. **In such circumstances referred to above, he prayed that there being merit in his appeal, the same may be allowed and the impugned judgment and order passed by the High Court be set aside.**

9. **On the other hand, Mr. Rajesh Mahale, the learned Senior counsel appearing for the respondents submitted that no**

error not to speak of any error of law could be said to have been committed by the High Court in passing the impugned order. He would submit that all that the High court has done is to condone the delay with a view to do substantial justice between the parties.

10. **In such circumstances referred to above, he prayed that there being no merit in this appeal, the same may be dismissed.**

11. **Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned judgment and order.**

12. **We take notice of the following glaring features of the matter:**

(i) **The original suit is of the year 1977. The said suit came to be re-numbered as Original Suit No. 1833 of 1980. It has been 48 years that the suit is pending for recording of evidence.**

(ii) **The Original Suit No. 1833 of 1980 came to be dismissed for default in the year 1983. The same was restored in 1984.**

(iii) **The defendant No. 4 in Original Suit No. 1833 of 1980, namely, Nagaraja passed away on 4.12.1999.**

(iv) **The respondents herein were granted opportunities on 6.03.2000, 18.7.2000 and 22.8.2000 respectively to bring the legal heirs of the defendant No. 4 on record. Having failed to do so the suit ultimately came to be dismissed as having stood abated.**

(v) **The rights of the deceased respondent No. 1 had already been decided in the suit filed for specific performance i.e. the Original Suit No. 33 of 1971.**

(vi) **The respondents having obtained the certified copies on 26.8.2005 preferred the Misc. Case No. 223 of 2006 on 06.03.2006.**

(vii) **Indisputably, there is a delay of 6 years (about 2200 days) in filing the application for recall itself.**

13. **We are at our wits end to understand why the High Court overlooked all the aforesaid aspects. What was the good reason for the High Court to ignore all this? Time and again, the Supreme Court has reminded the District judiciary as well the High courts that the concepts such as "liberal approach", "Justice oriented approach", "substantial justice" should not be employed to frustrate or jettison the substantial law of limitation.**

14. **We are constrained to observe that the High Court has exhibited complete absence of judicial conscience and**

restraints, which a judge is expected to maintain while adjudicating a *lis* between the parties.

15. **The rules of limitation are not meant to destroy the rights of parties. They are meant to see that the parties do not resort to dilatory tactics but seek their remedy promptly.**

16. **The length of the delay is definitely a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the respondents herein, it appears that they want to fix their own period of limitation for the purpose of instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the *bona fides* of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the**

opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

17. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. No court should keep the 'Sword of Damocles' hanging over the head of a litigant for an indefinite period of time.

18. For all the foregoing reasons this appeal succeeds and is hereby allowed.

19. The impugned order passed by the High Court is set aside and that of the Trial Court dated 05.08.2014 passed in Misc. No. 223 of 2006 is hereby restored.

.....J.
(J.B.PARDIWALA)

.....J.
(R.MAHADEVAN)

New Delhi.
8th January, 2025.