NC: 2023:KHC-K:5383
RSA No. 200155 of 2023

IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 14TH DAY OF JULY, 2023

BEFORE

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

REGULAR SECOND APPEAL NO. 200155 OF 2023 (PAR/POS)

BETWEEN:

KHUTBUDDIN S/O NIZAM SAB BIRADAR,
AGE : 60 YEARS, OCC : AGRICULTURE,
R/O. VILLAGE UMAPUR,
TQ. : BASAVAKALYAN,
DIST : BIDAR-585327.

...APPELLANT

(BY SRI SACHIN M MAHAJAN, ADVOCATE)

AND:

KHASIMSAB S/O NIZAM SAB BIRADAR
AGE : 65 YEARS, OCC : AGRICULTURE,
R/O. VILLAGE UMAPUR,
TQ. BASAVAKALYAN,
DIST : BIDAR-585327.

...RESPONDENT

(BY SMT.NEEVA M.CHIMKOD, ADVOCATE)

Digitally signed by SACHIN
Location: HIGH COURT OF KARNATAKA

THIS RSA IS FILED UNDER SECTION 100 OF THE CPC, PRAYING TO SET-ASIDE THE JUDGMENT AND DECREE DATED 02.08.2012 PASSED BY THE LEARNED CIVIL JUDGE AT BASAVAKALYAN IN O.S.NO.86/2012 AND THE JUDGMENT AND DECREE DATED 24.01.2019 PASSED IN R.A. NO.15/2017 ON THE FILE OF THE SENIOR CIVIL JUDGE BASAVAKALYAN AT BASAVAKALYAN.

THIS APPEAL, COMING ON FOR HEARING, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

1. This second appeal has been preferred by the defendant.

2. There is a delay of 689 days in filing the appeal. The records indicate that the suit was decreed exparte on 2nd of August, 2012 and the defendant herein preferred an appeal on 17.08.2017 i.e., after nearly six years. The Appellate Court has noticed that there was no ground made out for condoning the delay and it was also considered the merits of the matter and has come to the conclusion that there is no justification to condone the delay and it accordingly dismissed the application for condonaton of delay and consequently the appeal also.

3. As against the judgment of the Appellate Court passed on 24.01.2019, this appeal has been preferred nearly four years thereafter on 16.03.2023. Thus, the appellant is in the habit of filing his appeals belatedly.

4. In the affidavit filed in support of the application he has stated that he is a Labourer by occupation, dependent on his daily physical labour and was a rustic uneducated villager and due to serious economic crisis and ill-health of his family members he could not come down to Kalaburagi to prefer an appeal.

5. In my view, these kind of general statements cannot constitute sufficient cause to condone the delay. It is also to be stated here that the appellant and the respondent are brothers and the suit was one for partition of a property which was purchased under a registered sale-deed jointly by both of them.

6. The Trial Court taking note of this fact was decreed the suit. Thus, even on merits, I find no reason to entertain this appeal. Consequently, the second appeal is dismissed.

Sd/-
JUDGE

SN
List No.: 1 Sl No.: 14