

THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C GUNDLUPET**Dated that the 30th day of August 2017****Present: Sri. CHANDRASHEKAR P. DIDDI.]
Senior Civil Judge & JMFC.****Mis.No. 01/2018**

- Petitioner : 1. Devaraj S/o Subbegowda,
Puttanpura post,
Basavapura village,
Mangala Hobli,
Gundlupet Taluk.
2. S.Lingan S/o Subbegowda,
aged about 58 years,
Thorapally(Post)
Kunil Road,
Gudalur,
Nilgiri (district)
Tamil Nadu.
3. Manchamma D/o
Subbegowda
W/o Shivalingegowda,
Aged about 61 years,
Residing at Basavapura village,
Mangala Hobli,
Gundlupet Taluk,
Chamarajanagar District.
4. Subbamma W/o Subbegowda
aged about 75 years,
residing at Basavapura village,
Mangala Hobli,
Gundlupet Taluk,
Chamarajanagar District.

(By Sri. T.S., advocate,)

V/S.

- Respondent : 1 . Nagan S/o Subbegowda
443, Block no.12,
residing at Thorapally post,

Gudalur Taluk,
Nilagiri District,
Tamil Nadu State.

2. Palaniyappan S/o Subbegowda
@ Subban, D.No. 11,
Old Post Office building
Hampapura,
K.R.Nagara taluk,
Mysore district.

(by Sri. H.S.P., advocate)

: JUDGMENT :

This petition is filed by the petitioners seeking set aside the order dated 16.09.2016 passed in O.S.No. 166/2014 by the Hon'ble Senior Civil Judge and CJM., court, Chamarajanagar. In the petition, the petitioners submit that, the respondent filed suit for partition and separate possession.

2. After issuance of the summons, summons served to the defendant no.1. The defendant no.1 receives the summons on behalf of defendant no.2 and 3. But the defendant no.2 residing in Tamilnadu. The summons not at all served to the defendant no.2. Further submit that, the petitioner did not know to read and write Kannada they have put sign in English. They have learnt the english from his friends. Defendant no.2 suffering from blood pressure. Further submit that, the defendant no.1 husband Subbegowda, gifted the property to the Devaraju through the registered gift deed. The defendant no.1 children by name Madamma, Manchamma, Linganna executed a

consent deed in favour of the Devaraju. Devaraju is the absolute owner of the property and he is in possession and enjoyment of the property. The Naganna @ Nagaraju i.e., plaintiff executed a registered settlement deed in favour of petitioner no.1 i.e., Devaraju. The plaintiff no.1 has no right over the suit schedule property. The plaintiffs have concealed the said fact obtained the decree before Senior Civil Judge and CJM. Court, the petitioners are innocent persons. They have leading poverty life. Due to the lack of knowledge they have could not attend the court. Recently the defendant knew from the relatives that, the plaintiff obtained the exparte decree. If the petition allowed permitted the petitioner to contest the case no harm or loss would be caused to the respondent. On the other hand, if the petition is dismissed the petitioners put to untold hardship. Accordingly prays for allow the petition. Further submits that, the petitioners have filed I.A. no. I U/sec. 5 of Limitation Act prays for condonation of delay in filing the petition.

3. After issuance of the petition notice, notice served to the respondents. Sri. HSP advocate filed vakalath for respondents. But not filed any objection to the petition.

4. Heard the argument of petitioners' counsel and respondents' counsel submit that, the petition may be allowed on heavy cost. In

view of the materials placed before me, the following points are taken for consideration.

1. Whether the petitioners have made out sufficient grounds for set aside the exparte judgment passed by the Senior Civil Judge and CJM., court dated 16.09.2016 and delay in filing the petition is liable to be condoned ?
2. What order?
5. My answer to the above points.

Point No. 1: In the Affirmative

Point No. 2 :As per the following :

REASONS

6. **POINT NO.1:** It is specific contention of the petitioner that, the petitioners are illiterate persons. The defendant no.2 was residing in Tamil Nadu village. It is specific case of the petitioner that, the suit property is not the ancestral and joint family property. The suit property originally belong to the Subbegowda. The Subbamma W/o Subbegowda executed a registered gift deed infavour of defendant no.1. Further submits that, the plaintiff executed registered settlement deed on 03.12.1993 infavour of plaintiff's father by name Subbegowda. The petitioners submit that, the plaintiff has received an amount of ₹.16,000/- from his father in lieu of his share. Therefore, on the basis of the petition averments, the plaintiff/respondent given up share in favour

of his father by taking an amount of ₹ 16,000/- in the year 1993. In otherwords, the rights of the parties is to be adjudicated in the suit. The petitioners in the petition as well as I.A. No. I submit that, due to the lack of knowledge, the defendant no.1 could not file the written statement with in time. Further submit that, he came to know about the judgment recently.

7. On perusal of the I.A.No. I, there is delay of 14 months in filing the petition. The respondents' counsel not at all objection to the petition and not denied the grounds stated by the petition in the I.A.No. I, therefore in the interest of justice and as per the grounds stated in the I.A. no.I the delay in fling the petition is liable to be condoned and petition is deserves to be allowed. However, as the petitioner filed this petition after lapse of 14 months. Hence, this court opines that, the petition is liable to be allowed on costs. According I answer the above point in the affirmative.

8. **POINT NO.2:** In view of findings to the point's No. 1, I proceed to pass the following:

ORDER

I.A.No. I filed by the petitioner

U./Sec. 5 of Limitation Act is hereby allowed

on costs of Rs. 2,000/- payable to the plaintiff/respondent no.1.

The petition filed by the petitioner U/O 9 rule 13 of CPC., is hereby allowed. Judgement and decree passed by the Senior Civil Judge and CJM., Chamarajanagar in O.S.No. 166/2014 dated 16.09.2016 is hereby set aside.

It is directed to the office call for the record in Senior Civil Judge and CJM., court Chamarajnagar. Further it is directed to petitioners /defendants to file written statement in the next hearing date with out seeking adjournment. The O.S.no. 166/2014 call on 31.10.2018.

(Dictated to the typist in open court, corrected by me and then pronounced in the open Court on this the 30th day of August 2018)

(Chandrashekar.P.Diddi)
Senior Civil Judge and J.M.F.C,
Gundupet

