

31/05/2018

For orders,

**ORDERS ON I.A. NO.V UNDER SEC.151 OF
CPC**

The defendant No.3 counsel filed the above application praying to permit him to file written statement by recalling the order dated 11/01/2018 in the interest of justice.

2. In the annexed affidavit, it is stated that plaintiff has filed the suit for permanent injunction against defendant Nos.1 and 2. The plaintiff intentionally not made defendant No.3 as a party. Since defendant No.3 is the absolute owner and in possession of the suit schedule property. The defendant No.1 is the son of defendant No.3. After he came to know about the above case, he has filed an application under Order I Rule 10(2) of Code of Civil Procedure to implead him as one of the contesting defendant. Accordingly, his application to implead was allowed and he came on record as defendant No.3. The plaintiff claim right over the schedule property through Smt.Ramya who is said to have executed a gift deed in his favour in respect of the schedule property. Infact the said Ramya had filed a suit in O.S.No.6695/2006 against the defendant Nos.1 and 2. The defendant No.3 being the General Power of Attorney holder of the

defendant No.1 has contested the above case. Accordingly, the said suit was dismissed on merits. Upon suffered a decree the said Smt.Ramya executed a gift deed in respect of the schedule property. Infact defendant No.3 is the absolute owner of the property bearing site Nos.12,13, 30 and 31 formed in Sy.No.42/49 of Mallathahalli village, Yeshwanthapura Hobli, Bangalore South Taluk, but the said Ramya, now plaintiff trying to knock off the property belonging to him by showing the same as site Nos.1,2,3 and 4 formed in Sy.No.42/65. The defendant No.3 is age old person and suffering from age old illness, due to illhealth, he was admitted to Panacea Hospital for treatment and he was so weak and doctor has advised to take bed rest for two months. He was not able to meet his counsel and give instructions and documents to prepare his written statement. Some documents were obtained recently after he recovered from illness. Hence, prayed that allow the application.

3. The plaintiff counsel filed objections to the said application stating that application is not maintainable in the eye of law. The defendant No.3 himself got impleaded in the year 2016. Now he is seeking permission of this Court to file written statement. The said application is filed only for the purpose of dragging on the proceedings. The

defendant No.3 got himself impleaded as one of the defendants in the above suit by virtue of order dated 23/11/2016. Thereafter, the matter is set down for amendment by 02/01/2017 and on 30/01/2017, the amended plaint was filed. Thereafter, the case was adjourned for written statement of defendant No.3 on 10/03/2017. In spite of opportunity given to defendant No.3, he did not utilize the opportunity. Accordingly, this Court was pleased to note written statement as not filed on 11/08/2017. Thereafter, this Court has given several dates for taking steps to the defendant No.2 but the defendant No.3 did not file his written statement with appropriate application. From the date of appearance before the Court, one year and five months delay in filing of the written statement. The defendant No.3 was required to file written statement within 30 days from the date of order of his impleadment or within outer limit of 90 days. In the instant case, both eventualities are over. The 3rd defendant was aware of the case of the plaintiff and other defendants at the time of entering appearance before this Court. Hence, prayed that reject the application.

4. Having heard the learned counsel, the following points arise for my consideration:

1. Whether the application I.A. No.V under Sec.151 of Code of Civil Procedure deserves to be allowed ?

2. What Order?

5. My answer to the above points are as under ;

Point No.1: In the Affirmative

Point No.2: As per final order

for the following:

REASONS

6. **Point No.1:** The plaintiff has filed the suit against the defendants for permanent injunction in respect of the suit schedule property. When the case was posted for further evidence of PW-1, at that time defendant counsel filed the above application alongwith written statement. The defendant No.3 in his annexed affidavit stated that due to old age, he was suffering from illhealth and he was unable to meet his counsel to file written statement. In the cause title, the age of defendant mentioned as 73 years. On perusal of ordersheet, it reveals that on 11/08/2017, this Court has taken written statement of defendant No.3 as not filed. Considering the old age of defendant, if I.A. is allowed on cost, it would meet with the ends of

justice and also avoid multiplicity of proceedings.
Accordingly, I answer point No.1 in the Affirmative.

7. **Point No.2** : In the result for the foregoing reasons, I pass the following :

ORDER

I.A. No.V under Sec.151 of Code of Civil Procedure filed by the defendant No.3 is allowed on cost of Rs.500/-.

For costs and issues by 15/06/2018.

(Dictated to the Judgment Writer, transcribed by her, corrected and then pronounced by me in open court this the 31st day of May, 2018.).

**(NAGAVENI)
V ADDL.CITY CIVIL JUDGE
BANGALORE**