

Order Sheet
In the Court Of: PRL. CIVIL JUDGE AND JMFC BELAGAVI
AT BELGAUM

F.R.No:
Case Reg.No: O.S./451/2009

Plaintiff

V E R S U S

Defendent

1)Shri. Kiran Dhondopant Thakur
Age 57 years &1 others

1)Shri. Janaba Laxman Khorade &5
others

ORDERS ON I.A.No.XVII

The plaintiffs have filed this I.A. under section 151 of C.P.C. along with the affidavit of the general power of attorney holder of the plaintiffs seeking for reopen of this case and to direct the Court commissioner (A.D.L.R.) to carry out the commission work as per order dated 16/07/2014 on the ground that the plaintiffs had deposited the Court commissioners fee on 19/08/2014 and that due to the death of defendant No.1 and in the process of bringing his legal representatives on record, the process relating to Court commissioner had stopped.

2. The defendants have filed objections to the I.A., wherein they have denied the contents of the affidavit filed by the plaintiffs and opposed the I.A on the ground of delay of about three years in preferring this I.A.

3. The only point that arises for consideration is,

Whether the plaintiffs have made out sufficient grounds for reopening the stage and directing the Court commissioner to carry out the commission work as per order dated 16/07/2014?

4. Having heard the learned counsel for the plaintiffs and defendants, considering the grounds urged in the I.A., objections raised and case law relied upon, the aforementioned point is answered in the *affirmative* for the following,

REASONS

5. On perusal of the record, it is noted that the plaintiffs had filed I.A.II along with the suit seeking for appointment of Court commissioner. On 29/01/2010, it has been observed in the order sheet that I.A.II will be considered after the evidence. Thereafter on 16/07/2014 after considering the I.A.II and the no objection stated by the advocate for defendants, the A.D.L.R. Belagavi has been appointed as the Court Commissioner by fixing the fee at Rs.1,000/-. The order sheet discloses that on 04/09/2014 the plaintiff has deposited the commissioner's fee. On 20/02/2015 show cause notice has been issued to the Court commissioner for non-submission of the report. In reply to the show cause notice, as noted in the order sheet dated 13/03/2015, the A.D.L.R. has sought for furnishing of address and copies. Therefore it was directed that all the necessary details and copies shall be sent to the Court commissioner. Thereafter as the plaintiffs did not furnish the details and copies sought by the Court commissioner even after sufficient opportunity, on 27/07/2015, the case was posted for the original stage of arguments. The case remained in the same stage and on 05/08/2016, the present counsel for the plaintiffs filed memo of appearance for the plaintiffs and case was adjourned once again for arguments.

6. On 18/08/2016 the plaintiffs filed I.A.XII seeking for re-

issuing the commissioner warrant and after giving opportunity to the defendants to file objections to I.A.XII, the said I.A. was allowed on 27/08/2016 and commissioner warrant was reissued. The commission work remained pending and the commissioner had not submitted the report even on 21/04/2017. On 21/04/2017, the advocate for defendants No.1 & 2 filed memo reporting that the defendant No.1 had died on 12/04/2015. On 28/04/2017, the plaintiff filed I.A.XIII for direction to the defendants to furnish particulars of the legal heirs of deceased defendant No.1, which was allowed. Subsequently, I.As. XIV to XVI were filed for bringing the legal heirs of deceased defendant No.1 on record and the I.As. were allowed on 13/09/2017. Consequently the plaint was amended and case was adjourned for additional written statement. However even after availing sufficient opportunity as the legal heirs of deceased defendant No.1 did not file any additional written statement, the same was taken as not filed on 11/06/2018 and case was posted for arguments. Thereafter having availed four adjournments, the plaintiffs have filed the present I.A.

7. Considering the proceedings in this case as discussed herein above, it can be noted that when the commissioner warrant was issued on the first occasion, the plaintiffs had committed default in furnishing the necessary copies. But subsequently the I.A.XII filed by the plaintiffs for re-issuance of commissioner warrant was allowed on 27/08/2016. Thereafter the commissioner has caused delay in submitting the report and in the meanwhile the process of bringing the legal heirs of deceased defendant No.1 started, which has virtually eclipsed the process of the order dated 27/08/2016. Thus to this extent the plaintiffs cannot be

said to be completely at fault although it was their duty to take needful steps to have that process continued simultaneously. Nevertheless, after the process of bringing the legal heirs of defendant No.1 was completed, the plaintiffs ought to have filed the present I.A. at least at that time but the plaintiffs have caused delay to that extent by not taking steps immediately. Hence for these reasons considering the fact that the Court had considered it fit to allow I.A.XII in the interest of justice on 27/08/2016, considering the fact that the stalling of the process related to commission work cannot be entirely attributed to the plaintiffs and considering the fact that the defendants No.1 & 2 can be compensated to the extent of delay caused by the plaintiffs, in order to meet the ends of justice and to avoid multiplicity of proceedings, I am of the considered opinion that there are sufficient grounds to reopen the case to direct the Court Commissioner/ADLR to carry out the commission work by passing a conditional order in order to avoid any further delay in the case considering its age and stage. Accordingly the aforementioned point is answered in the affirmative and it is just and proper to pass the following,

ORDER

I.A.XVII is hereby allowed on the following terms on cost of Rs.2,000/- payable by the plaintiffs to the defendant No.1 and 2:

All the necessary particulars including the memo of instructions that are required for carrying out commission work shall be furnished in the office within one week from the date of this order. Subject to the compliance of the said condition, the commissioner warrant shall be issued in terms of the orders dated 16/07/2014 and 27/08/2016.

Further subject to the condition that the benefit of this Order shall not inure to the benefit of the plaintiffs on failure of compliance as per this order promptly and without causing any further delay.

The Court Commissioner is directed to execute the commission work

and submit the report as per the memo of instructions well in time by the date fixed without fail considering the age of the case. This direction shall be specifically reflected in the Commission Warrant by the office at the time of its issuance.

Accordingly, subject to compliance issue commission warrant, returnable by 12.11.2018.

Sd/-

(Sarfaraz Hussain Kittur)

Prl. Civil Judge & JMFC, Belagavi.