

ORDERS ON IA.NO.IX FILED U/SECTION. 151 OF CPC

At the time of arguments, this application is filed by the defendant No.1 seeking permission to file the written statement.

2. This application is accompanied with an affidavit sworn by the defendant No.1, wherein she has stated that plaintiffs have filed false suit against them. Further it is stated that the defendant No.5 is in actual physical possession of the suit property as per the gift deed. Initially she has engaged the senior counsel Shri. A.G. Mulwadmath and he has filed written statement in this suit. After the death of said Advocate, she engaged new advocate, at that time the matter was fixed for cross of DW.1 and thereafter matter was posted for arguments. The counsel for plaintiffs argued the matter and when the matter is posted for argument of their side, her advocate verified the file and found that she has not filed any written statement or memo of adoption. Hence, her counsel advised her to file the written statement. There is no intention to delay the hearing of the case. If the application is allowed, no loss or hardship will be caused to the other side. On the contrary, if the application is not allowed, she will be put to heavy loss which cannot be compensated in terms of money. Hence, prayed to allow the application.

3. The said application has been resisted by the plaintiffs by filing their objection, wherein they have denied the contents of the affidavit and contended that after the death of then counsel on record, the defendants have led their evidence and after completion of evidence of DW.1, the defendant No.5 thought fit to adduce evidence of defendant No.4 as DW.2 and knowing full well the defendant Nos. 1 to 4 have not submitted their written statement. Thereafter, they have advanced their arguments. Then matter was adjourned on 05.06.2023, 13.06.2023 and 21.06.2023 for defendants arguments. Now without assigning any cogent evidence, the defendant No.1 as a matter of after thought has filed the present application at belated stage seeking permission to file the written statement. Hence, prayed to reject the application.

4. Heard the arguments. Perused the rival contention of the parties.

5. On the basis of the above facts, the following points that arise for my consideration are;

1. Whether the defendants have made out sufficient ground to allow the application ?
2. What order ?

6. My answer to the above points is;

Point No.1 : In the Affirmative;

**Point No.2: As per the final order,
for the following;**

REASONS

7. **Point No.1:-** The defendants' counsel argued that the suit summons to defendant No.1 was not served till 10.02.2020. The defendant No.1 has appeared before the Court through his counsel. But, defendant No.1 has filed power only on 25.08.2021. Prior to that one RKP Advocate had filed memo undertaking to file power for defendant No.1. Thereafter the stage was posted for defendants evidence without giving opportunity to the defendant No.1 to file written statement. Thereafter at the time of arguments and looking to the records, he came to know that the defendant No.1 has not filed written statement. The non-filing of written statement is not intentional. On the other hand, the plaintiffs' counsel argued that the present application seeking permission to file the written statement is filed at belated stage, when the matter was posted for arguments. Further argued that the plaintiffs' counsel has already advanced the arguments on merits and the matter was adjourned on 05.06.2023, 13.06.2023 and 21.06.2023 for defendants arguments.

Now without assigning any cogent evidence , the defendant No.1 as a matter of after thought has filed the present application seeking permission to file the present application. The counsel for the plaintiffs relied on following decisions:

1) ILR 2004 Karnataka 1399 (A.Sathyapal and others V/s. Smt. Yasmin Banu Ansari and another)

2) 2015 (1) KLJ 486 (Smt. Bharathi Swamy V/s. Smt. S.H. Sharada and others)

3) 2016 (2) KLJ 305 (T. Ramanna and another V/s. Smt. Lakshmidev Amma(Since deceased) by her Lrs.

8. The present suit is filed by the plaintiffs against the defendants seeking the relief of Specific performance. On perusal of the order-sheet, it appears that the suit summons was served on defendants only in the year 2020. On perusal of the order-sheet, it appears that no stage is posted for filing of the written statement of defendant No.1. The defendants counsel states that he being the subsequent advocate was of the impression that the defendant No.1 has filed the written statement. At the time of arguments and looking to the records, he came to know about non-filing of the written statement by the defendant No.1. The decisions relied on by the plaintiffs aptly applicable to the facts on hand. An opportunity

has to be given to the defendant No.1 to file the written statement. However, the present application is filed at the stage of defendants arguments. Hence, the application deserves to be allowed by imposing costs. Accordingly point No.1 is answered in the **affirmative.**

9. **Point No.2:-** For the above discussion, I proceed to pass the following;

ORDER

IA.No.IX filed by the defendants U/Section 151 of CPC is hereby allowed on payment of cost of Rs. 700/-.

Defendant No.1 is permitted to file written statement.

For Addl Issue if any by 14-8-2023

IV Addl. Civil Judge & JMFC.,
Belagavi.

