

27-04-2026:

ORDER ON IA No.27 and 28

This I.A. No.27 is filed by the defendant Nos.6, 7, 8(a) to 8(d) 10(c), 10(d), 11(a), 11(b) and 12 seeking permission to file written statement along with the written statement of defendant No.7 and adoption memo.

In the affidavit it is stated that due to non-availability of necessary documents and inability to furnish instructions to their counsel, the written statement could not be filed within the time. It is further contended that no prejudice would be caused to the plaintiffs if the application is allowed.

The learned counsel for the plaintiffs has submitted no objection. However, the defendant Nos.1 to 5 have opposed the application contending that the same is belated, filed after lapse of several years and only intended to delay the proceedings. It is further contended that the matter is already posted for defendants' evidence and the application is not maintainable. Hence, they prayed for rejection of the

application.

I.A. No.28 is filed by the defendant Nos.9 and 11 (c) under Order 8 Rule 1 (10) R/w. Section 151 of C.P.C., seeking permission to file their written statement.

In the affidavit it is stated that they were under a bonafide belief that their relatives had already filed written statement on their behalf. It is further contended that the written statement filed earlier through an advocate was without their consent. Due to strained relation among family members, they now intended to file independent written statement asserting their share in the properties.

The plaintiffs have no objection to this application. However, the defendant Nos.1 to 5 have opposed the same on similar grounds as urged in I.A. No.27, namely, delay, lack of bonafide and intention to protect the proceedings.

Heard both sides. Perused the materials available on records.

The records disclose that the present suit is one for partition and separate possession. Initially, the suit was decreed by this Court. The said judgment and decree came to be challenged before the Hon'ble High Court of Karnataka Dharwad Bench, Dharwad in RFA No.100434/2022, wherein the Hon'ble High Court set aside the judgment and decree dated 22-06-2022 and remanded the matter with a direction to afford opportunities to the parties to lead evidence/further evidence and dispose of the suit expeditiously within 08 months.

Thus, the proceedings have been reopened. Pursuant to the remand order, the direction of the Hon'ble High Court clearly mandates that opportunities be given to the parties to put-forth their case. Though, there is considerable delay in filing the written statement by the defendant Nos.6, 7, 8(a) to 8(d) 10(c), 10(d), 11(a), 11(b) and 12 and defendant Nos.9 and 11(c), it is settled principle that, in a partition suit, all co-sharers are necessary parties and adjudication should be comprehensive so as to avoid multiplicity of proceedings.

Further the plaintiffs have expressly stated that

they have no objection to allowing both the applications. The primary opposition is from defendant Nos.1 to 5. In the considered view of this court denial of opportunity to file written statement would result in serious prejudice to the applicants, particularly in a suit for partition and separate possession involving determination of share. On the other hand, any convenience caused to the other defendants can be compensated by imposing cost. Thus objection regarding delay, though relevant, cannot be outweigh the requirement of adjudicating the rights of the parties on merits, especially in view of the remand order of the Hon'ble High Court. Hence, this Court deems it fit to pass the following:

ORDER

IA No.27 is allowed, subject to payment of cost of Rs.2,000/- by the defendant Nos.6, 7, 8(a) to 8(d) 10(c), 10(d), 11(a), 11(b) and 12 to the defendant Nos.1 to 5.

The written statement filed by the defendant No.7 along with adoption memo by defendant Nos.6, 8(a) to 8(d) 10(c), 10(d), 11(a), 11(b) and 12 shall be taken on

record.

Further I.A. No.28 is also allowed, subject to payment of cost of Rs.2,000/- by the defendant No.9 and 11(c) to the defendant Nos.1 to 5.

The written statement filed by the defendant Nos.9 and 11(c) shall be taken on record.

Further opportunity is reserved to the plaintiffs and other defendants to file additional pleadings, if any.

Call on for payment of cost by 29-04-2026.

Senior Civil Judge, Bailhongal.

