

26-06-2024

Plf. - M.S.,

Def.1, 5 to 6 - B.R.S.,

Def.2 & 3 - B.N.A.,

Def.4 - P.K.,

Def.7 - Exparte

ORDER ON I.A.No.II

The instant application has been filed by the defendant No.4 seeking permission to file written statement by re-calling stage.

2. In the affidavit, the defendant No.4 has stated that, he was collecting some documents from the concerned authority and applied for Certified Copy of the same for preparation of written statement. The defendant No.4 was unable to contact his counsel and give proper instruction to file written statement in stipulated time. He had requested his counsel to seek for adjournment for filing written statement and objection to I.A. There is no negligence or inordinate delay in filing the written statement. Hence, prayed to allow the application.

3. The counsel for plaintiffs filed objection to the present application by stating that, the same is not maintainable under law. It is stated that once the matter is posted for Judgment,

O.S.No.320/2021

the court has to pronounce Judgment and no obligation can be entertained to re-open the case. It is further stated that there is inordinate delay in filing the written statement. The defendant No.4 has not made out sufficient grounds to allow the application. Hence prayed to reject the application with cost.

4. Heard both sides.

5. **The following points would arise for my consideration:**

1. Whether the defendant No.4 has made out grounds to condone the delay in filing written statement by re-oping the case ?
2. What order?

6. My answer to the above points are as follows:

Point No.1 : **In the Affirmative**
Point No.2 : **As per final Order
for the following :**

REASONS

7. **Point No.1:** This is a suit filed by the plaintiffs against the defendant seeking Partition and Separate Possession,

O.S.No.320/2021

declaration and Permanent Injunction. In this case, the defendants No.1 to 6 appeared through their counsel, but failed to file written statement and matter was posted for plaintiff side evidence. On 11.09.2023, the matter was posted for arguments. The counsel for plaintiff addressed his arguments, but Genealogical tree produced by the plaintiffs was incorrect. Accordingly, the counsel for plaintiff submitted fresh Genealogical tree on 18.12.2023 and addressed his arguments on 21.01.2024. Finally, the matter posted for Judgment on 03.02.2024. At this stage, the defendant No.4 got advanced the case and filed the present application seeking permission to file written statement. The application is strongly objected the counsel for plaintiffs. The counsel for plaintiffs has relied upon a decision reported in **ILR 1996 KAR 553**, wherein it is held that once the posted for Judgment, no application to re-call or advance hearing for any other purpose cannot be entertained. On the other-hand learned counsel for the defendant No.4 has relied upon a decision rendered by Hon'ble High Court of Karnataka in **WP.No.201215/2021 (GM-CPC), DOG 2511/2021**, wherein the decision of the very-same court rendered in **ILR 2004 KAR 2215** is referred and held that the court has the power to re-open the case from the stage of judgment, if sufficient grounds are made out. He has also relied upon another decision rendered in **WP.No.106382/2018 (GM-CPC)**, wherein the very-same position of law is reiterated. Under such circumstances, the

O.S.No.320/2021

court has to consider the facts and circumstances of the case to see whether this application can be allowed at this stage.

8. On going through the records of the case, it is appearing that this is a suit filed by the plaintiffs in the year 2021 seeking Partition and Separate Possession and other consequential reliefs. In a suit for partition, the plaintiffs and the defendants shall be considered on equal footing. The defendants have not filed written statement initially in this case. However, on going through the order sheet it reveals that the plaintiffs have also taken sufficient opportunity to lead their evidence. The plaintiffs have even failed to produce the proper Genealogy at the inception. The matter came to be posted for Judgment on 03.02.2024 and at that stage the present application came to be filed. In this application, the defendant No.4 has clearly stated that he was busy in obtaining certain documents from the concerned authority and could not instruct his advocate in time to file written statement. It is also stated that the non filing of the written statement is not intentional. The grounds urged by the defendant No.4 are sufficient to recall the stage for filing of the written statement and to allow the present application. I am of the considered opinion that on the given facts and circumstances of the case, I.A. filed by the defendant No.4 deserves to be allowed on cost. Hence, I answer **Point No.1 In the Affirmative.**

9. **Point No.2** : In view of the above findings, I proceed to pass the following:

ORDER

I.A. No.II filed by the defendant No.4 U/Sec.151 of C.P.C is hereby allowed on cost of Rs.1,000/-.

The written statement filed by defendant No.4 is taken on record by reopening the case, subject to payment of cost.

Matter posted for payment of cost and compliance U/Sec.89 of C.P.C.

R/by: 29.08.2024.

Sd/-
**Addl. Senior Civil Judge & J.M.F.C.,
Devanahalli.**