

**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE
AND JMFC., AT GOWRIBIDANUR**

Dated this 15th day of July 2025

:: PRESENT::

Smt. PUSHPA .D

B.Com, L.L.B.,

**Addl. Civil Judge & J.M.F.C,
Gowribidanur**

ORIGINAL SUIT NO.148/2008

PLAINTIFFS : **1.** Smt. Devika and others

// Versus //

DEFENDANTS: **1.** Sri. O.N.Nagaraju and another

ORDER ON THE APPLICATION UNDER SECTION 151 OF CPC
FILED BY DEFENDANT NO.1

The Defendant No.1 has filed this application on 11.12.2019 seeking permission of this court to recall the order dated 05.09.2019, posting the above matter for arguments by suppressing from the stage of additional written statement, if any, after amendment of the plaint, in the interest of justice and equity.

2. The reasons ventilated by the D1, the affidavit annexed to the application are that, the plaintiff No.1 was dead and her legal

heirs have been brought on record through an amendment of the plaint dated 05.09.2019. Subsequently, the Hon'ble Court posted the matter for arguments on merits without affording an opportunity to D1 to file an additional written statement, if any, in response to the amended pleadings. It is further submitted that D1 is in the process of engaging new counsel to effectively contest the case and, therefore, seeks to recall the present stage of the proceedings and be permitted to file an additional written statement, as contemplated under Order VIII Rule 9 of the Code of Civil Procedure. It is further submitted that if this application is allowed, no hardship would be caused to the other side. On the other hand, if the application is not allowed, it will lead to multiplicity of proceedings. Hence, prayed to allow the application.

3. On the contrary, the LR's of plaintiffs 1 and 2 have filed objection to the present application contending that the application is not maintainable either in law or on facts of the case and it is filed only to drag the proceedings beyond reasonable stretch of time. It is contended that application is vague and no proper grounds have been made out in the application. The plaintiffs further contend that since Defendant No.1 (D1) did not file a regular written statement within the time prescribed under the Code of Civil Procedure, the question of filing an *additional* written statement does not arise. Attention is also drawn to the fact that D1's earlier request to accept the written statement had already been rejected by the Court due to non-compliance with procedural timelines. As such, D1, having failed to adhere to statutory requirements, lacks the *locus standi* to seek permission for filing an

additional written statement at this belated stage. It is alleged that the present application is merely a tactic to delay the proceedings. It is further pointed out that the plaintiffs have already advanced their arguments on merits, and the matter was posted for arguments on behalf of Defendant No.2. However, before those arguments could be heard, D1 filed the instant application, which is stated to be impermissible in law and clearly with a malafide intention to delay the proceedings of the suit. Hence, prayed to reject the application.

4. Heard the arguments on both sides at length.
5. Perused the materials available on record.
6. After going through the application along with Affidavit and objection statement, the points arise for consideration are;

POINTS FOR CONSIDERATION

- 1. Whether the Defendant No.1 has made out sufficient grounds to allow the application?*
- 2. What order?*

7. My answer to the above points are as under:

Point No.1 : In the Negative

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

REASONS

8. **Point No.1:-** The instant suit is one filed for the relief of Declaration and for permanent injunction.

9. Through this application, the D1 has sought for recalling the order dated 05.09.2019 and allowing him to file additional written statement. The Lrs of plaintiff has filed objection to the application.

10. Heard the arguments on both sides at length. During the course of arguments on the said application, D1 produced the citation in support of his submission.

11. Upon perusal of the order sheet, it is seen that summons were duly served to the defendants on 27.09.2008. Despite being granted sufficient opportunity, Defendant No.1 (D1) failed to file a written statement. Consequently, on 28.07.2009, the written statement of D1 was recorded as "not filed," and the proceedings continued accordingly. Subsequently, on 06.11.2014, D1 filed an application under Section 151 of the Code of Civil Procedure, along with a written statement in two sets. The matter was posted for objections to the said application. After the plaintiffs filed their objections, the case was listed for arguments. Upon hearing both sides, the Court, by order dated 03.01.2015, rejected D1's request and dismissed the interlocutory application. Thereafter, on 11.07.2019, counsel for the plaintiffs reported the death of Plaintiff No.1 and filed an application under Order XXII Rule 3 read with Section 151 of the CPC, seeking permission to bring the legal representatives of the deceased plaintiff on record. The Court allowed the said application and permitted the necessary amendment to the plaint. In compliance, the amended plaint was filed on 05.09.2019, and the matter was posted for

arguments on the main suit. Thereafter, on 11.12.2019, D1 filed the present application.

12. Before proceeding further, it is necessary to refer the provisions as contemplated under Order VIII Rule 9 of CPC:

“9. Subsequent pleadings.

No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same”.

A bare reading of the above said provision, it is clear for filing a additional written statements is not a matter of right, it can only be filed with the leave of the court.

It is evident from the record that although summons were duly served on Defendant No.1 (D1) on 27.09.2008, he failed to file a written statement within the time prescribed under the Code of Civil Procedure. After a lapse of nearly seven years, D1 made an attempt to file a written statement by filing an application under Section 151 CPC on 06.11.2014. The plaintiffs raised serious objections to the said application, and this Court, after hearing both sides, dismissed the application by order dated 03.01.2015. Subsequently, following the report of the death of Plaintiff No.1, the necessary amendment was carried out, and the legal representatives of the deceased plaintiff were brought on record. An amended plaint was filed, however, it is evident that the amendment was confined solely to the cause title and did not alter the substantive averments or reliefs claimed in the plaint. Despite

this, Defendant No.1 has once again approached the Court by filing another application under Section 151 CPC, seeking permission to file an additional written statement. If the amendment to the plaint introduces new facts or changes the cause of action substantially, the defendant may be granted permission to file an additional written statement. However, if the amendment is merely procedural or formal (e.g., substitution of legal heirs), and no new facts are pleaded, there is no automatic right to file an additional written statement. However, this Court is of the considered view that Defendant No.1 cannot take advantage of a procedural amendment limited to substitution of parties to revive or assert a right that has already been forfeited. The earlier application for filing a written statement having been dismissed on 03.01.2015, and no fresh pleadings having been introduced by way of substantive amendment, the question of filing an additional written statement at this stage does not arise. It is also pertinent to note that the matter is now posted for final arguments and has been pending since the year 2008. Granting an opportunity to Defendant No.1 to file an additional written statement at this belated stage would only serve to delay the proceedings further and cause serious hardship and prejudice to the plaintiffs. The said decision relied upon by D1 is completely different set of facts and circumstances, which are not applicable to present case on hand. Accordingly, application filed by the D1 is devoid of merits. In the touchstone of reasons assigned above, this court answers **Point No.1 in the Negative.**

Point No.2: In view of my findings on Point No.1, this court proceed to pass the following:

ORDER

The application filed by Defendant No.1 u/s. 151 of CPC is hereby rejected.

For arguments by 06.08.2025

SD/-

**Addl.Civil Judge & JMFC.,
Gowribidanuru**