

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND JMFC
AT N.R.PURA**

Present: Smt.Anitha, B.A. (Law) L.L.B,
Senior Civil Judge & JMFC.,
N.R.Pura.

Dated this the 9th day of October, 2020

O.S.No.8/2019

Plaintiff: Sowmya.H.S.
D/o H.P.Shankarappa,
Aged 32 years,
R/at Sharada Nagara,
Sringeri Post and Sringeri Taluk.

V/s

Defendants: 1. Sahana H.S., D/o H.P. Shankarappa,
Aged 36 years,
R/at Hariharapura Post, Koppa Taluk.

2. Sowdhamini.H.S.
D/o H.P. Shankarappa,
Aged 34 years,
R/at Hariharapura Post,
Koppa Taluk.

3. H.P. Shankarappa,
S/o Late Puttegowda,
Aged 65 years,
R/at Hariharapura, Hariharapura Post,
Koppa Taluk.

4. Vasudeva.H.P.
S/o Late Puttegowda,
Aged 63 years,
R/at Ambedkar Street,
Upperpet, Koppa, Koppa Taluk.

5. Ramanna, S/o Late Puttegowda,
Aged 61 years,
R/at Hullumakki, Koppa Post and Taluk.

6. Smt.Jayalakshmi,
W/o Srinivasagowda,
Aged 59 years,
R/at Megalamane, Belagola, Narve
Post, Koppa Taluk.
7. H.P.Chandrashekhar,
S/o Late Puttegowda, Aged 56
years, Attender, Room No.152,
2nd Floor, Vidhana Soudha,
Bengaluru-1.
8. Smt.Vanajakshi, W/o Shantharaj,
Aged 54 years, R/at Kademane,
Sukta Post, Gubbiga village,
N.R.Pura Taluk.
9. H.P. Manjunatha, S/o Puttegowda,
Aged 52 years, R/at Sringeri
Road, Hariharapura Post, Koppa Taluk.
10. N.K. Sathish, S/o Kalasappa Naik,
Aged 57 years, Agriculturist,
R/at Dodda Thota, Niluvagilu village,
Koppa Taluk.

ORDERS PASSED ON I.A.NO. X AND XI

Learned counsel for defendants No.8 and 10 has filed these two applications under Order VIII Rule 1 Proviso R/w Section 151 of CPC seeking for condonation of delay in filing the written-statement and to take the written-statement on record by allowing the applications.

2. Both the applications are supported with affidavits of defendants No.8 and 10. In the affidavit defendant No.8 stated that, she was unable to give instructions to prepare the written-statement within stipulated period due to her ill health and as such on 22.11.2019 her written-statement was taken as nil. If the application is allowed no loss or hardship will be caused to the other side or else she will be put to hardship. Hence, prayed to allow the application.

3. In the affidavit the 10th defendant stated that, due to his personal inconvenience he could not appear before Senior Civil Judge and Prl. JMFC., Tarikere and was unable to give instructions to his counsel to prepare the written-statement and objection and on 09.03.2020 the objection and written-statement taken as nil. It is also stated that, on 10.03.2020 the court has passed an order on IA No.VII. There is very reasonable delay and consideration of written-statement and objection is just and necessary for adjudication of the case. Hence, prayed to allow the application.

4. The learned counsel for the plaintiff filed separate objection on similar grounds contending that, both the applications are not maintainable under law or on facts. Defendants No.8 and 10 have sworn to false affidavit and the reasons assigned by the 8th defendant stating that, due to her ill health she could not not file written-statement is false. The 8th defendant has not produced the medical documents.

Defendants No.8 and 10 should have filed the written-statement within 30 days from the date of service of summons and within 90 days with permission of the court. It is also contended that, the 8th defendant after service of summons sold the suit schedule item No.1 to 3 properties on 07.11.2019 to the 10th defendant. It is also contended that, if the applications are allowed the plaintiff will be put to great hardship. The plaintiff also contended that, the 10th defendant colluded with the 8th defendant and got purchased item No.1 to 3 properties on 07.11.2019. Hence, prayed to dismiss the applications with exemplary costs.

5. Thereafter, heard arguments addressed by learned counsel for defendants No.8 and 10 and the plaintiff and perused the case papers. After hearing the arguments and on perusal of the case papers, the points that arise for consideration are as hereunder:

POINTS

1. Whether defendants No.8 and 10 have made out sufficient grounds to condone the delay in filing the written-statement?
2. What order?

6. The findings on the above points are as hereunder:

Point No.1: In the Affirmative

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

REASONS

7. **Point No.1:** The plaintiff filed the suit against the defendants for the relief of partition and separate possession of her 1/28th share in the suit schedule properties and also prayed for declaration that, the registered Will executed by one Kadamma W/o Puttegowda in favour of the 8th defendant dated 17.06.1996 is not binding upon the share of the plaintiff and for other reliefs. It is the case of the plaintiff that, defendants No.1 and 2 are her elder sisters and the 3rd defendant is her father. Defendants No.4 to 9 are the brothers and sisters of her father. It is her specific case that, the suit schedule properties are the ancestral and joint family properties of herself and the defendants. She had got 1/28th share in the suit schedule properties. The plaint also reveals about the registered Will dated 17.06.1996 executed by Smt.Kadamma who is her grandmother in favour of the 8th defendant who is her father's sister bequeathing the suit schedule item No.1 to 3 properties in favour of the 8th defendant.

8. It is also to be noted that, along with the plaint the plaintiff maintained IA No.1 under Order XXXIX Rule 1 and 2 R/w Section 151 of CPC seeking for an order of temporary injunction restraining defendants No.3 to 9 from creating any third party interest over suit schedule properties. The plaintiff has sought for an interim order of temporary injunction which was declined by this court and this court issued emergent

notice to the defendants on IA No.I and suit summons was also issued. The suit came to be filed on 29.07.2019 and this court ordered for issuance of summons on 03.08.2019. The order-sheet goes to show that, on 30.08.2019 defendants No.1, 2, 3, 5 to 9 appeared through their respective counsels and defendant No.4 placed exparte. This court has posted the case for written-statement of D1 to D3, D5 to D9 by 20.09.2019. On the said date on filing the application, the time has been extended to file written-statement. Thereafter, on 22.11.2019 since 90 days was over this court has taken the written-statement of defendant No.8 as nil. Thereafter, the plaintiff counsel moved IA No.VI under Order I Rule 10(2) of Cr.P.C. stating that, the 10th defendant now on record is the purchaser of the properties from the 8th defendant. The said application came to be allowed and summons has been issued to the 10th defendant and it has been duly served on 07.02.2020.

9. The present applications came to be filed on 20.03.2020 by defendant No.8 as well as defendant No.10. As on that day there was 114 days delay in the written-statement of the 8th defendant. It is very pertinent to note that, the 10th defendant was brought on record and impleaded on 31.01.2020 by amending the plaint and on the same day amended plaint was also filed. 30 days for 10th defendant comes to an end on 08.03.2020 and on 09.03.2020 the written-statement came to be taken as not filed. Admittedly, 90

days not over for the 10th defendant to file the written-statement. However, there is delay in filing the written-statement.

10. At the time of addressing the arguments learned counsel for the plaintiff has placed reliance on the decision reported in:

ILR 2004 KAR 4444

Between: M. Narayanswamy vs M. Vasu

Wherein Hon'ble High Court of Karnataka has held that,

"The decision in Mohammed Anwar's case has to be confined to the facts of the said case and should not be taken as a precedent for holding that the written statement can be filed after the expiry of the period contemplated under Order 8 Rule 1 as amended by CPC Amendment Act, 2002 and that the Court has no power to extend the time for filing the written statement beyond what is stipulated under Order 8 Rule 1 CPC. Ratio laid down in A. Sathyapal's case agreed".

11. In numerous decisions Hon'ble Supreme Court of India has held that, the proviso to Order VIII Rule 1 is not mandatory but only directory in nature. In this regard this court would like to rely upon the decision reported in:

ILR 2016 KAR 4700

Between: Justice Micheal F. Saldanha (Retd.) Vs. Sri.
M.P.Noronha (Melwyn Prakash Noronha) and others

Wherein Hon'ble High Court of Karnataka has held that,

“The provisions of Order 8 Rule 1 CPC are directory in nature and not mandatory. A procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed”.

12. As per the principles laid down in the above said decision Order VIII Rule 1 is only directory in nature and not mandatory. Such being the case the principles laid down in the decision furnished by learned counsel for plaintiff are not applicable to the facts of the case on hand. On the other-hand the principles laid down in the above decision are aptly applicable to this case. This is the suit for partition. Admittedly, it is the settled principles of law that, in a suit for partition all the parties who are interested are to be included. Whether there is bona-fide purchase by the 10th defendant or not is to be determined at the time of trial. Now, it is very much necessary for this court to consider whether the delay could be condoned or not. Admittedly, there is delay in filing the written-statement. Only because there is delay of 114 days, an opportunity for defendants No.8 and 10 cannot be rejected on the ground of mere delay. Their presence and an opportunity for them to defend the case is very much necessary for proper adjudication of the case after trial.

Rejecting these two applications will lead to multiplicity of proceedings and curtail the principles of natural justice. Therefore, this court comes to the conclusion that, defendants No.8 and 10 have made out sufficient grounds in condone the delay in filing the written-statement. The delay could be compensated by imposing costs. Accordingly, point No.1 is answered in the affirmative.

13. **Point No.2:** In view of the reasons discussed above, this court proceeds to pass the following:

ORDER

I.A.No.X and XI filed by defendants No.8 and 10 under Order VIII Rule 1 proviso Section 151 of CPC are hereby allowed with costs of Rs.150/- each.

Accordingly, the written-statements filed by defendants No.8 and 10 are hereby taken on record.

(Dictated to the Stenographer, transcribed and computerized by him on the computer, transcript corrected and pronounced by me in the open court on this the 9th day of October, 2020)

Sd/-

(Anitha)

Senior Civil Judge and JMFC.,
N.R.Pura.