

**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE &
J.M.F.C. AT: HONNALI.**

PRESENT: Smt. Prema Vasantrya Pawar
B.Com.LL.B.(Spl)
Principal Civil Judge and JMFC,
Honnali.

Original Suit No.29/2015

Dated: 10th October 2017.

Plaintiff:

Defendant:

Smt.Hemavathi W/o
Panchaksharappa D/o
Late.
Channaveerappagowda,
Aged about 35 years,
Agriculturist, R/o Kuruva
village, Honnali Taluk,
Davanagere District, Now
R/o Bhadravathi Town,
Shivamogga District.

V/s.

Smt. Savitramma
W/o Siddappa D/o
Channaveerappagowd
a, Aged about 65
years, R/o Nandigavi
village, Harihara
Taluk, Davanagere
District and others.

(By Sri. M.S.Shivaswamy.,
Advocate)

(By Sri. R.P./B.U. for D-1,
Sri. A.B.Jagadeesh for D-2
and Sri. S.H. for D-3 to 6.,
Advocates)

PARTIES TO IA NO.3

Applicant:

Opponent:

2. Sri. Ramappa S/o
Channaveerappa, Aged
about 60 years,
Agriculturist, R/o Kuruva
village, Honnali Taluk,
Davanagere District.

V/s.

Smt.Hemavathi W/o
Panchaksharappa
D/o Late.
Channaveerappago
wda, Aged about 35
years, Agriculturist,
R/o Kuruva village,

Honnali Taluk,
Davanagere District,
Now R/o
Bhadravathi Town,
Shivamogga
District.

Order on I.A.No.3 U/ Sec. 151 of CPC

The defendant no.2 has filed an application U/ Sec. 151 of CPC prays that permit him to file his written statement by condoning the delay in filing the same by allowing this application in the ends of justice.

2. In support of this application defendant no.2 has swearing his affidavit.

3. Per contra the plaintiff has filed her objection.

4. Having heard on both the sides.

5. Following points will arise for my consideration:

1. Whether the application filed by the defendant no.2 U/s 151 of CPC is deserves to be allowed?

2. What order

6. My answers to the above points are as under:

Point No.1: In the Affirmative

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

REASONS

7. **Point No.1** : The plaintiff has filed this suit against the defendants for the relief of partition and separate possession over the suit schedule properties. The defendant no.2 has filed his affidavit and submitted that he is agriculturist by profession and due to his timely operations, it was not possible for him to contact his counsel and giving instructions to file his written statement. Further the defendant no.2 has submitted that permit him to file his written statement, if the application is not allowed, he will put untold hardship and application is allowed no prejudice will cause to the other side. Hence prays that allow the application.

8. Per contra the plaintiff has filed her objection contended that the application filed by the defendant no.2 is belated one and not maintainable either in law or on facts. Further contended that after lapse of three years the defendant no. 2 come up with this application by filing written statement and seeking condonation of delay. The defendant no.2 is not the stranger he is the member of the same family and he also stated in the written statement and created fictitious story. Further the plaintiff has contended that the written statement schedule described by defendant no.2 is not proper and it is an imaginary only to abuse the process of law. Further the plaintiff has contended that already suit is filed in

O.S.187/2002 against the same defendant no.2 and said case was disposed heard and decided at Hon'ble Senior Civil Judge Harihar and also filed FDP No.20/04 the division has made in order to demarcated the respective shares. Further plaintiff has contended that the application filed by the defendant no. 2 is an belated one and defendant no.2 is not permitted to file his written statement. Hence prays that to dismiss the application.

9. In view of the application and objection and also observing the arguments advanced by the either sides it appears that the defendant no.2 submitted in his affidavit that due to agricultural work he could not contact with counsel and not given instructions to prepare the written statement and delay caused to filing written statement is not intentional one. Per contra the plaintiff has contended that the application filed by the defendant no.2 is belated and after lapse of three years filed this application. In view of these submission it reveals that there is a catena of decisions the delay should be condone liberally. No doubt according to order 8 Rule 1 the written statement has to be filed within 30 days from the date of service of summons and with the leave of the court the defendant has to file written statement within 60 days. In the instant case already lapse of 3 years, now defendant no.2 filed this application submitted that due to agricultural work he could not approach to his counsel, therefore it reveals that, delay caused for filing written

statement is to be considered as a directory and not as a mandatory, therefore to imposing suitable cost if, the defendant no.2 is permitted to file his written statement, then no prejudice will cause to the plaintiff. If the application is not allowed the defendant no.2 will put hardship. Hence it is relevant to impose suitable cost allow the application, no hardship will cause to the other side. Hence for the above reasons the Point No.1 is answered in the Affirmative.

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

ORDER

The IA no.3 is filed by the defendant no.2 U/s 151 of CPC is hereby allowed awarding cost of Rs.1,500/-.

The written statement of defendant no.2 is taken as filed.

(Directly dictated to the Stenographer on computer and typed by her, corrected by me and then pronounced in Open Court on 10th day of October 2017)

(Smt. Prema Vasant Rao Pawar)
Principal Civil Judge & JMFC.,
Honnali.