

IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL
JUDGE & J.M.F.C., HUBBALLI

Present:

SMT. SARVAMANGALA K.M.,
B.A. LL.B.,
I Additional Senior Civil Judge and JMFC.,
Hubballi.

O.S. No.233/2003

Dated this the 23rd day of July, 2025

Plaintiff/s : Sri. Jayapraksh Gangadharappa
Tenginkai and others.

.Vs.

Defendant/s : Smt. Jyotiba Krishnappa Banakatti
and others.

PARTIES TO I.A. No.XXVI

Applicant : Smt. Parvatidevi W/o Parasappa
Tammannavar.

.Vs.

Opponents : Sri. Jayapraksh Gangadharappa
Tenginkai and others.

- i. Provision under : Under Order 9 Rule 7 R/w
which application is Sec.151 of CPC.
filed
- ii. Relief sought for : To set aside the exparte order
dated:24.02.2004 against the
defendant No.9 and seeking

*permission to proceed the case
along with vakalath.*

- iii. The date on which : 15.07.2025
application is filed*
- iv. Number of the : XXVI
application*
- v. The date on which : 17.07.2025
objections are filed
by different
opponents*
- vi. The date on which : 23.07.2025
orders were passed
on the said
application*

ORDERS ON I.A.No.XXVI

The defendant No.9 has filed this I.A. No.XXVI under Order 9 Rule 7 R/w.Sec.151 of C.P.C., seeking to set aside the exparte order dated:24.02.2004 against the defendant No.9 and seeking permission to proceed the case along with vakalath.

2. The brief facts of the affidavit annexed to application is that, the suit summons is not served upon defendant No.9. The address mentioned in this suit is of her paternal home address and after her marriage she is residing permanently in her matrimonial home address. The Court summons and suit summons through RPAD post which was addressed to defendant No.9 is not having her proper and permanent address.

There is a bare mentioning of name and village in the cause title of the suit, but her permanent residential address is not mentioned in the suit summons and suit summons through RPAD post. That defendant No.9 residing in the said address mentioned in this affidavit since her marriage, as such the suit summons and suit summons through RPAD post was not duly served to her. The Plaintiff might have maintained to not to serve the suit summons and suit summons through RPAD post upon her. the said RPAD is having the endorsement of "not claimed" and the Hon'ble Court was pleased to place defendant No.9 as ex-parte on 24.02.2004.

3. *It is further submitted that recently in the month of May 2025, defendant No.9 came to know that the suit has been filed by the plaintiffs pertaining to the schedule properties. That there was the function conducted in the month of May 2025 in the suit property and she was surprised to know who is conducting the function in the suit property. The suit properties are ancestral joint Hindu family properties and her brother was continuing the agricultural works and activities in the suit properties. The defendant No.9 having legal right, title and interest and inheritance rights as the coparcener. The plaintiffs have urged that there is agreement of sale in their favour executed by all of defendant No.9 brothers and sisters along with her*

mother. That the said agreement is not binding upon her, as she not a signatory to any documents as alleged by the plaintiffs. It is further submitted that defendant No.9 not the literate person and not having any thorough knowledge about Court proceedings and the Court procedure. And when she came to know about the illegality taken place behind her back, she consulted her counsel and asked him to take further steps and my counsel asked her to provide necessary documents etc. Later on, she requested to her counsel to check the court papers and documents of this suit in the court. After the search of the court records of this suit, counsel for the defendant No.9 stated that she have been made as the party as defendant No.9 and also stated that she have been placed ex parte by this Hon'ble Court as per the Order dated:24.02.2004. The defendant No.9 right, title and interest and inheritance rights in and over the suit schedule properties are affected. As such to protect her rights, title and interest in and over the suit schedule properties, as per law it is just and necessary to permit her to appear in this suit by setting aside the ex parte order dated:24.02.2004.

4. *It is further submitted that, to adjudicate the subject matter involved in this suit and also to protect her rights and interest and also to avoid the multiplicity of proceedings and also to save the valuable and*

precious judicial time of the courts and also to minimize the expenses and to answer the issues judiciously to the full and final extent it is just necessary to permit her to appear in this suit and submit my say to meet the ends of justice and equity. On the other hand if the application as prayed for is allowed no loss, damage, injustice injury and hardship will be caused to other side as well as other persons to the suit.

5. *The objections of the plaintiffs is that the causes, reasons assigned in the affidavit are totally false and not believable and all the defendants No.1 to 9 being brothers and sisters, it is very much imaginary on the part of the defendant No.9 to say that she is not aware of the cases filed against her and nobody from their family have intimated her and thus under the circumstances, the reasons assigned for setting aside ex-parte order dated:24.02.2004 are not at all sufficient for setting aside ex-parte order against her and further the application is vague for and does not disclose as to what the defendant No. 9 was doing for the last 22 years. Further, there is an inordinate delay of nearly 22 years in filing the application and the same is not explained properly and even on this ground the application deserves to be dismissed. The defendant No.9 has miserably failed to explain an inordinate delay of 22 years in filing the present application and further,*

even her affidavit is very much silent with regard to the fact of knowledge of the matter and thus, the application is devoid of merits and the same may be dismissed. Other defendants submits said application may be allowed on heavy cost in order to condone delay.

6. *Heard arguments.*

7. *The points for consideration are;*

1. *Whether the leave as prayed for can be granted?*

2. *What order ?*

8. *The above point No.1 is answered in the Affirmative and point No.2 is as per final order, for the following;*

REASONS

9. **Point No.1:** *Admittedly this is the suit for specific performance of contract in respect of the suit schedule property against the defendants.*

10. *When the matter is set down for cross of DW-2 counsel for defendant no-9 filed the present application seeking to set aside the exparte order dated:24.02.2004 against the defendant No.9 and seeking permission to proceed the case along with vakalath.*

11. *As per the contentions of the defendant No-9 suit summons was not served upon defendant No.9. The*

address mentioned in this suit is of her paternal home address and after her marriage she is residing permanently in her matrimonial home address. The Court summons and suit summons through RPAD post which was addressed to defendant No.9 is not having her proper and permanent address. There is a bare mentioning of name and village in the cause title of the suit, but her permanent residential address is not mentioned in the suit summons and suit summons through RPAD post. That defendant No.9 residing in the said address mentioned in this affidavit since her marriage, as such the suit summons and suit summons through RPAD post was not duly served to her. The Plaintiff might have maintained to not to serve the suit summons and suit summons through RPAD post upon her. the said RPAD is having the endorsement of "not claimed" and the Hon'ble Court was pleased to place defendant No.9 as ex-parte on 24.02.2004. It is further submitted that recently in the month of May 2025, defendant No.9 came to know that the suit has been filed by the plaintiffs pertaining to the schedule properties. That there was the function conducted in the month of May 2025 in the suit property and she was surprised to know who is conducting the function in the suit property. The suit properties are ancestral joint Hindu family properties and her brother was continuing the agricultural works and activities in the suit

properties. The defendant No.9 having legal right, title and interest and inheritance rights as the coparcener. in this regard this court perused postal cover and address mentioned therein, it is noticed to the court that, it is not the sufficient address to serve the summons, The defendant no. 9 contends that she was never served with summons in the suit and the address mentioned in the summons was her premarital address. It is stated that after her marriage she has been residing at her matrimonial home and due to the incorrect address she did not receive notice of the proceedings and was unaware of the suit being Pending. She stated that recently in the month of May 2025, defendant No.9 came to know that the suit has been filed by the plaintiffs then only she became aware of the case and has promptly moved this application.

12. The plaintiff has filed objections opposing the application mainly on the ground of delay of 22 years and contends that no sufficient cause has been shown for such a long delay. It is also contended that the application is an afterthought to delay the proceedings. But it is seen that the address shown in the summons issued to defendant no. 9 is her pre-marital residence and not complete address. The plaintiff has not produced any proof to establish that the summons was duly served at her correct and present address. The

court records do not show any acknowledgment or personal service or substituted service to that effect. When a party contends that she was never served and the address shown is incorrect and there is no proof of due service, it cannot be said that she had knowledge of the proceedings. The settled position of law is that, When the summons has not been duly served, the delay in filing the application cannot be a ground to reject it. Accordingly, the court finds that defendant no. 9 has shown sufficient cause for her non appearance and that the ex parte order dated 24-02-2004 is liable to be set aside in the case of justice. Any how in order to provide an opportunity to the defendant no-9 said application deserves to be allowed. Hence, the point No.1 is answered in the negative.

13. **Point No.2:** *In view of finding on point No.1, this court proceeds to pass the following;*

ORDER

I.A. No.XXVI filed by the defendant No.9 under Order 9 Rule 7 R/w.Sec.151 of C.P.C. is hereby allowed.

Ex party against the defendant No.9 dated 24-02-2004 is hereby set aside and permit her to contest the suit. By considering the age of the suit the

defendant no-9 is here by directed to file her written statement if any without causing delay.

For written statement of defendant No-9.

Call on: 11-08-2025.

*(Dictated to the Stenographer directly on computer, script corrected and then pronounced by me in the Open Court on this the **23rd day of July, 2025**)*

sd/-

*(Smt. Sarvamangala K.M.)
I Addl. Senior Civil Judge & J.M.F.C.
Hubballi.*