

**IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE,
GADAG.**

Present: Sri. Prakash Channappa Kurabett
(B.SC., L.L.B. Spl.)
Addl. Senior Civil Judge, Gadag

O.S.No.52/2012

Dated this the 18th day of March 2024

PLAINTIFFS:

1. Smt. Rahamatbi W/o Abdulalam
and others

(By Sri. MRH Adv.,)

-Vs-

DEFENDANTS:

1. Miyajan S/o Muktumsab Abbigeri
and others

(D1 to 3 By Sri MAPh Adv.,)

PARTIES ON I.A. No. VII

**APPLICANT/
plaintiff No.3:**

Smt.Jainabbi W/o Sikandarsab Sindagi,

-Vs-

OPPONENTS:

1. Noor Ahamed S/o Muktumsab Abbigeri
and others

Provision under which the application is filed	U/Sec.151 of CPC
Relief sought for	Partition and separate possession
The date on which the application is filed	07.03.2024
Number of the application	IA No.VII
The date on which the objections are filed by different opponents	01.03.2024
The date on which the orders were passed on the said application	18.03.2024

ORDER ON I.A. No.VII

This I.A.No.VII filed by the applicant / plaintiff No.3 U/ Sec.151 of CPC with a prayer to recall the order dated 22.02.2024 and the previous written statement dated 21.02.2013 filed by the defendants No.1 to 3 may kindly be taken on record and accordingly recast the issues and proceed with the case.

2. In the sub-joined affidavit filed along with the application the applicant/plaintiff No.3 has sworn in the affidavit and contended that, the plaintiff No.3 in this case and I know fact of the case the entire plaint averment kindly be treated as part and parcel of this

affidavit in order to repetition of facts. Further the defendant have filed IA No.6 with false accompanying affidavit by suppressing the material fact and the Hon'ble High Court order as per his in order to evil design. The Hon'ble High court of Karnataka, Dharwad Bench dated 05.03.2022 in RFA No.100037 /2014 at page No.7 at 3rd para in the operative portion stated that, the trial court is directed accept the written statement filed by the defendants No.1 to 3 and permit the parties to adduce additional evidence. However it is made clear that, defendant shall not be permitted to any Addl. Defence. It is further stated that, defendants No.1 to 3 on 21.02.2013 itself filed the written statement and the same was not permitted this court as it was filed after inordinate delay and the said act of this Hon'ble Court IA No.III dated 21.02.2013 to permit the defendant to filed the written statement was came to be rejected on 26.03.2013. The written statement of the defendant is not taken on 17.10.2012 to set aside the said order on IA No.III came to be filed and the same was rejected. It is

further stated that, accordingly, the defendant filed RFA No.100037/2014 before the Hon'ble High Court of Karnataka, Dharwad bench, to set aside the judgment and decree dated 25.11.2013 passed by the Hon'ble Court with further prayer to take the written statement dated 21.02.2013 through IA No.III on record and permit to adduce the evidence to the defendant in this case and accordingly prayer to remand the case. That, accordingly Hon'ble High Court Karnataka on 05.03.2022 allowed RFA No.100037/2014 by imposing Rs.50,000/- cost to be paid to the plaintiff for deliberate enormous harassment is caused to the plaintiff. The Hon'ble High Court of Karnataka remanded the case back to the Hon'ble Court with clear unambiguous order as stated above. It is further stated defendant knowing and consciously suppressing the material facts order in RFA No.100037/2014 as per his whims and fancies and committed the offence of contempt order in RFA No.100037/2014. It is further stated that IA No.VI dated 22.02.2024 did not recall plaintiff put to irreparable loss

and guardianship that, which can not be compensated in term of money. Hence, he prayed to allow the application.

3. On the other hand, the defendant No.1 filed objections to above said application and contended that, the application filed by the plaintiff is not maintainable either in law or facts. Further contended that, the written statement filed by the defendants on 21.02.2013 is rejected by this court and the Hon'ble High Court of Karnataka, Dharwad bench in the writ petition filed by us considering the written statement filed us is also rejected. Therefore, the plaintiff ha not legal right to consider the rejected written statement filed by this defendant in this suit by virtue of filing this application. The plaintiff ha no legal right to dictate court to brought on the rejected written statement in this suit.
4. Further contended that, the defendants No.1 to 3 were filed the written statement on 21.02.2013 with leave of the court. However, during that time the plaintiffs have raised the objections and sought for dismissal of the

interim application No.3. this court has rejected and written statement filed by us is also rejected. Further contended that, there is no such existing law the plaintiff dictate the defendants to consider the earlier written statement in this suit. However, the Hon'ble High Court of Karnataka, Dharwad bench has not been whispered in the judgment passed in RFA No.100037/2014 stating that, our earlier written statement filed by us may kindly be consider and same may be brought on record and no such order has been passed. However, the plaintiffs have no legal right to dictate the court as well as to us regarding to consider the which written statement is applicable to this suit. However, the plaintiffs have got every liberty to challenge order passed on IA No.6/2024 before the competent court and also challenge order on framing the issues on basis of the pleadings before the competent court etc. The plaintiffs have got every right to challenge the IA No.6/2024 before the competent court. However, the order passed on IA No.6 by accepting the written statement of us the plaintiff have got no legal

right to file another application for the recalling order on IA No.6/2024 in this suit. Therefore, there is no merit in the interim application filed by the plaintiffs. The intention of the plaintiff is very clear that, we should not make any defence in the suit and proceed the matter without any defence. Therefore by allowing the IA No.7 our legal right to defend the suit will be frustrated. Hence, prayed to reject the application.

5. On the basis of above pleadings, objections the points that would arise for my consideration are as under:

POINTS

1. Whether I.A. No.VII filed by the applicant/ plaintiff U/s 151 of CPC deserves to be allowed?
 2. What order?
6. Heard the arguments and perused the material on record.
7. My findings on the above points are as under:
- Point No.1: In the negative
 - Point No.2 : As per final order,
for the following:

R E A S O N S

8. **Point No.1:-** I.A.No.VII filed by the applicant / plaintiff U/ Sec.151 of CPC with a prayer to recall the order dated 22.02.2024 and the previous written statement dated 21.02.2013 filed by the defendants No.1 to 3 may kindly be taken on record and accordingly recast the issues and proceed with the case.
9. In the sub-joined affidavit filed along with the application the applicant/plaintiff has sworn in the affidavit and contended that, the plaintiff No.3 in this case and I know fact of the case the entire plaint averment kindly be treated as part and parcel of this affidavit in order to repetition of facts. Further the defendant have filed filed IA No.6 with false accompanying affidavit by suppressing the material fact and the Hon'ble High Court order as per his in order to evil design. The Hon'ble High court of Karnataka, Dharwad Bench dated 05.03.2022 in RFA No.100037 / 2014 at page No.7 at 3rd para in the operative portion

stated that, the trial court is directed accept the written statement filed by the defendants No.1 to 3 and permit the parties to adduce additional evidence. However it is made clear that, defendant shall not be permitted to any Addl. Defence.

10. It is further stated that, defendants No.1 to 3 on 21.02.2013 itself filed the written statement and the same was not permitted this court as it was filed after inordinate delay and the said act of this Hon'ble Court IA No.III dated 21.02.2013 to permit the defendant to filed the written statement was came to be rejected on 26.03.2013. The written statement of the defendant is not taken on 17.10.2012 to set aside the said order on IA No.III came to be filed and the same was rejected. It is further stated that, accordingly, the defendant filed RFA No.100037/2014 before the Hon'ble High Court of Karnataka, Dharwad bench, to set aside the judgment and decree dated 25.11.2013 passed by the Hon'ble Court with further prayer to take the written statement dated 21.02.2013 through IA No.III on record and permit

to adduce the evidence to the defendant this case and accordingly prayer to remand the case. That, accordingly Hon'ble High Court Karnataka on 05.03.2022 allowed RFA No.100037/2014 by imping Rs.50,000/- cost to be paid to the plaintiff for deliberate enormous harassment is caused to the plaintiff. The Hon'ble High Court of Karnataka remanded the case back to the Hon'ble Court with clear unambiguous order as stated above.

11. It is further stated defendant knowing and consciously suppressing the material facts order in RFA No.100037/2014 as per his whims and fancies and committed the offence of contempt order in RFA No.100037/2014. It is further stated that IA NO.VI dated 22.02.2024 did not recall plaintiff put to irreparable loss and guardianship that, which can not be compensated in term of money. Hence, he prayed to allow the application.
12. On the other hand, the defendant No.1 filed objections to above said application and contended that, the application filed by the plaintiffs are not maintainable

either in law or facts. Further contended that, the written statement filed by the defendants on 21.02.2013 is rejected by this court and the Hon'ble High Court of Karnataka, Dharwad bench in the writ petition filed by us considering the written statement filed us is also rejected. Therefore, the plaintiff ha not legal right to consider the rejected written statement filed by this defendant in this suit by virtue of filing this application. The plaintiff ha no legal right to dictate court to brought on the rejected written statement in this suit.

13. Further contended that, the defendants No.1 to 3 were filed the written statement on 21.02.2013 with leave of the court. However, during that time the plaintiffs have raised the objections and sought for dismissal of the interim application No.3. this court has rejected and written statement filed by us is also rejected. Further contended that, there is no such existing law the plaintiff dictate the defendants to consider the earlier written statement in this suit. However, the Hon'ble High Court of Karnataka, Dharwad bench has not been

whispered in the judgment passed in RFA No.100037/2014 stating that, our earlier written statement filed by us may kindly be consider and same may be brought on record and no such order has been passed. However, the plaintiffs have no legal right to dictate the court as well as to us regarding to consider the which written statement is applicable to this suit. However, the plaintiffs have got every liberty to challenge order passed on IA No.6/2024 before the competent court and also challenge order on framing the issues on basis of the pleadings before the competent court etc.

14. The plaintiffs have got every right to challenge the IA No.6/2024 before the competent court. However, the order passed on IA No.6 by accepting the written statement of us the plaintiff have got no legal right to file another application for the recalling order on IA No.6/2024 in this suit. Therefore, there is no merit in the interim application filed by the plaintiffs. The intention of the plaintiff is very clear that, we should not make any defence in the suit and proceed the matter

without any defence. Therefore by allowing the IA No.7 our legal right to defend the suit will be frustrated. Hence, prayed to reject the application.

15. I have gone through Hon'ble High Court of Karnataka, Dharwad Bench order passed in RFA No.100037/2014 dated 05.03.2022 in which it is clearly mentioned that, in the order that,

The appeal is allowed.

The judgment and decree dated 25.11.2013 passed by the Addl. Sr. Civil Judge & CJM, Gadag, in OS No.52/2012, is set aside. The matter is remitted back to the trial court.

The trial court is directed to accept the written statement filed by the defendants No.1 to 3 and permit the parties to adduce additional evidence. However, it is made clear that, the defendant shall not be permitted to file any additional defence.

However, for the inconvenience caused, the appellants/defendants No.1 to 3 are directed to pay cost of Rs.50,000/- to the plaintiffs within four weeks from the date of receipt of a certified copy of this order.

It is further directed that, the trial court shall proceed with the case only after the cost being paid by defendant No.1 to 3 to the plaintiff and shall conclude the proceedings within three months from that day. If the cost is not paid within four week as prescribed, the judgment and decree dated 25.11.2013 passed by the trial court stand revived.

16. Perusal of the Hon'ble High court of Karnataka, Dharwad bench order However, the Hon'ble High Court of Karnataka, Dharwad bench has not been whispered in the judgment passed in RFA No.100037/2014 stating that, our earlier written statement filed by us may kindly be consider and same may be brought on record and no such order has been passed and however the Hon'ble High Court of Karnataka in para 7 of the said order however, we are of the opinion that one more opportunity has to be given in the interest of justice to the appellants/defendant No.1 to 3 to file written statement subject to payment of cot of R.50,000/- by the defendants No.1 to 3 to the plaintiffs. So, considering the above discuss reason IA No.7 filed by the plaintiff is not

sustainable in eye of law. **Accordingly, I answered point No.1 in the negative.**

17. **Point No.2:-** In view of my findings on the above points, I proceed to pass the following:

O R D E R

I.A.No.VII filed by the applicant / plaintiff U/Sec.151 of CPC is hereby rejected.

(Dictated to the Stenographer directly on computer and revised by me and then pronounced in the open court on this the 18th day of March 2024)

(PRAKASH C. KURABETT)
Addl. Senior Civil Judge,
Gadag.