

IN THE COURT OF THE II ADDL. CIVIL JUDGE
AND JMFC, CHANNARAYAPATNA

:PRESENT:

Sri. Deepu B.C B.A.L., LL.B.,
II Addl. Civil Judge and JMFC,
Channarayapatna.

Dates 8th day of June 2022

Original Suit No.412/2016

Plaintiff : Puttegowda,
S/o Siddegowda,
Aged about 75 years,
Choulagala Village,
Dandiganahalli Hobli,
Channarayapatna Taluk,
Hassan District.

-Vs-

Defendants : 1. Thimmegowda @ Suresh,
S/o Rangegowda,
Aged about 38 years,

2. Shila W/o Thimmegowda,
Aged about 35 years,
Both are R/o Behind K.E.B.,
Power Station,
Channarayapatna Town,
Channarayapatna Taluk.

ORDER ON I.A No.VII

The instant application is filed by the defendant No.2 U/o 9 rule 7 R/w 151 of CPC., praying to set aside the exparte order passed against her and permit her to contest the case.

2. Along with application, affidavit is filed wherein the defendant No.2 has sworn to fact that, the plaintiff has filed this false suit against her and recently she came to know about the filing of case when the Court Commissioner came to the suit schedule property and due to her ill-health and personal inconvenience and outbreak of Covid-19 pandemic, she was unable to appeared before this Court and contest the case. Further the defendant No.1 is her husband and he is working at B.S.F., at Meghalaya. Hence he could not appeared before this Court and contest the case. Hence this Court has placed the defendant placed exparte and proceeded further. Thus it would required to permit the defendant No.2 to contest the case by condoning the delay. Accordingly, she prayed to allow the application.

3. On the other hand, the aforesaid application is resisted by the plaintiff by denying the entire averments in the application and contended that, the averments made in the application are false and vexatious. The plaintiff has filed this suit for the relief of declaration of title and mandatory injunction in respect of 'A' and 'B' schedule properties and during the pendency of this suit, the plaintiff has filed I.A No.2 under order 26 rule 9 R/w 151 of CPC., to appoint the Court

Commissioner to make local inspection with respect the suit schedule properties. In the local inspection, he found that, the defendant has encroached the 'B' schedule property which is belong to the plaintiff. Now after lapse of 5 years, the defendant No.2 has come up with this application and same is not maintainable and it is liable to be rejected. Accordingly he prays to reject the application.

4. Heard arguments on both side and perused the materials on record.

5. The points arise for consideration are as follows;

POINTS

1. *Whether the defendant No.2 makes out a valid grounds to allow the I.A No. VII ?*

2. *What order?*

6. My answer to the above points are as follows;

<i>Point No.1</i>	<i>:-</i>	<i>In the Affirmative</i>
<i>Point No.2</i>	<i>:-</i>	<i>As per order on the basis of following :</i>

:: REASONS ::

7. **POINT NO.1 :-** As could seen from the record the instant suit has been filed by the plaintiff against the defendants for the relief of declaration of title and mandatory injunction in respect of suit schedule properties. In pursuance of the suit, the summons was issued to the defendants. As per the endorsement dated 28.07.2016, the

summons was duly served upon defendants and they were placed *exparte* and during the pendency of the suit, the plaintiff has filed I.A No.2 under order 26 rule 9 R/w 151 of CPC., to appoint the Court commissioner to make local inspection with respect to suit schedule properties. Accordingly the Court Commissioner has submitted his report. At this juncture, the defendant No.2 has come up with this application.

8. It is pertinent to note here that, order 9 rule 7 CPC., empowers the Court to permit the defendant to defend the case by setting aside the *exparte* order issued against him only if it is the genuine reasons shown for non-appearance. Herein in this case the summons was duly served on the defendants on 28.07.2016. But in spite of that, they did not appear before this Court and after the lapse of 5 years, defendant No.2 has come up with this application. Admittedly there is no sufficient reasons placed by the defendant No.2 with regard to her non appearance before this Court. However due to outbreak of Covid-19, the entire nation was shut down for a period of 1 to 2 years. So under this circumstances this court is of opinion that, an opportunity may be given to the defendant No.2 to contest the case. If at all the defendant No.2 is not permitted to contest the case, her natural right will be defeated and every person is to provide sufficient opportunities to contest or defend the case. Further admittedly the plaintiff is put in inconvenience, but however said inconvenience can be compensated by imposing necessary cost. Therefore this Court is of humble opinion that

the defendant No.2 is made out valid reasons to permit her to contest the case by set aside the exparte order passed against her. Thus **Point No.1 is answered in the Affirmative.**

9. POINT NO.2:- In the light of for going reasons, this Court proceed to pass following:

:: ORDER ::

***I.A No.VII filed by defendant No.2
U/Order 9 Rule 7 R/w 151 of C.P.C is hereby
allowed on cost of Rs.2000/-.***

***The exparte order passed against the
defendant No.2 is hereby set aside and
thereby defendant No.2 is permitted to
defend the case.***

(Dictated to stenographer, transcribed by her, transcript revised, corrected, print-out signed and then pronounced by me in the open court on this 8th day of June 2022.)

(Deepu B.C)
II Addl. Civil Judge & J.M.F.C.,
Channarayapatna.