

IN THE COURT OF CIVIL JUDGE AND JMFC AT
HOLENARASIPURA

Present:- Sri. Chandrashekhara.P.Diddi, B.A., LL.B,
Civil Judge and J.M.F.C,
Holenarasipura.

Dated this the 7th day of January, 2015

O.S.No.134/2008

Between

Rani and others : Plaintiffs

(By Sri.B.N.R.,Adv.,)

V/s

Chikkamallamma and others : Defendants

(D1 & 2 By Sri.P.D.D.,Adv.,
D3, 6, 7, 8 to 11 By Sri.H.S.A.,Adv.,
D12 By Sri.R.S.,Adv.,
D4 & 5 Ex-parte)

ORDERS ON IA-XIII

Janaki : Applicant/Defendant No.4

V/s

Rani and others : Plaintiffs

ORDERS ON IA-XIII

The defendant no.4 has filed IA.No.XIII under order 9 rule 7 of
C.P.C prays for set aside the ex-parte order against her.

2. In the accompanying affidavit of IA.No.XIII the defendant no.4 submitted that the plaintiff has filed the suit for partition. The said suit was dismissed for non prosecution. There after the plaintiff has filed Mis.No.7/2011. The said mis petition was allowed and the present suit was restored. After restoration of the suit the defendant no.4 has not known about hearing dates and notice was not served to the defendant no.4 as the defendant no.4 was taking treatment in Mysore hospital. Hence the defendant no.4 filed this application seeking set aside the ex-parte order and permission to proceed with the case. Hence prays for allowing the application.

3. The plaintiffs counsel present and submits that the application may be allowed on cost.

4. Heard the argument of both the counsels.

5. The points that arise for my consideration are as follows.

1. Whether the defendant no.4 made out sufficient grounds for set aside the ex-parte order and what order?

6. I answer the above points are as follows.

Point No.1:- In the affirmative.

as per the final orders for the following reasons.

REASONS

7. **Point No.1:-** I have gone through the entire order sheet. The suit is dismissed for non prosecution. There after as per the order passed in mis petition the suit was restored. After restoration of the suit the notice issued to all the parties. But the notice is not served to the defendants no.4 and 5. The plaintiff counsel taken steps through the paper publication on 21/08/2014. In spite of issuance of paper publication the defendants no.4 and 5 not appeared before the court. There after on 20/10/2014 this court placed defendants no.4 and 5 ex-parte. Now the defendant no.4 filed this application. I have gone through the affidavit averments. The defendant no.4 submitted that she had gone to Mysore for treatment. Therefore she could not attend the court and the notice is not duly served to the defendant no.4. On perusal of the order sheet it reveals that the plaintiff has taken paper publication through widely circulated paper in Hassan Mithra. Therefore on the basis of documentary evidence produced by the plaintiff counsel it reveals that the plaintiff has not taken paper publication which is widely circulated in Mysore. As per the affidavit grounds the defendant no.4 was taking treatment in Mysore hospital. Therefore the grounds mentioned by the defendant no.4 in the affidavit is proper and acceptable one. If the order dated 20/10/2014 is

set aside in respect of the defendant no.4 no harm or loss will be caused to the plaintiffs. On the other hand if the application is not allowed the defendant no.4 will be put to irreparable loss. Accordingly I answer the above points in the affirmative. For the above stated reasons I proceed to pass the following order.

::O R D E R::

IA. No. XIII filed by the defenadnt no.4 under order 9 rule 7 of C.P.C is hereby allowed.

The ex-parte order dated 20/10/2014 is hereby set aside in respect of the defendant no.4.

Permitted the defendant no.4 to appear and proceed with the case. It is directed to the defendant no.4 to file the written statement within 14 days from the date of this order.

No order as to cost.

(Dictated to stenographer and transcribed by her revised and corrected by me then pronounced in the open court dated this 7th day of January, 2015)

**(Chandrashekhara.P.Diddi)
Civil Judge and J.M.F.C,
Holenarasipura.**