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**IN THE COURT OF THE CIVIL JUDGE & JMFC., JEWARGI*****Present*****Sri. Kashinath V. Uppar****B.Sc. LL.B.**

Civil Judge & JMFC., Jewargi.

O.S. No. 112/2016**Dated on this the 10th day of January-2025****ORIGINAL SUIT No.112/2016**

PLAINTIFF : Devanna S/o Hanamantraya,
Age: 35 years, Occ: Agriculture,
R/o Mallabad, tq: Jewargi, Dist: Kalaburagi.

(By. Sri.S.K., Advocate)V/s.

DEFENDANTS: 1. Nagappa S/o Tejappa & others.

(By Sri. V.K., Advocate)

PARTIES TO I.A. No.11

APPLICANT/ : Basamma W/o Kallappa
PLAINTIFF

V/S

OPPONENT/ : Devanna S/o Hanamantraya,
DEFENDANTS

COMMON ORDER ON I.A.No.10

I.A.No.10 is filed by the learned counsel for the defendant No.9 U/Sec. 151 of CPC, for seeking a permission of the court to file the written statement.

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2. Defendant No.9 sworn to an affidavit in support of application, wherein she has stated that, when she was received the summons she is busy in her agricultural work and also she is not well since long time. Hence, she unable to contact her counsel to give a instruction for preparing the written statement to be filed in this suit. Hence, she has filed the application for seeking a permission of the court to file a written statement. With these averments the defendant No.9 sought for allowing I.A.No.10.

3. The learned counsel for plaintiff filed objections to the said application that, defendant has not to disclose how to defendant No.9 was prevented to file written statement within 30 days from the date of appearance on dated 17-06-2022. Defendant No.9 was not filed her written statement within 90 days prescribed in law. The reasons stated by the defendant No.9 it is not a proper ground to allow the application. More ever, issues also framed. With these contentions, the plaintiff has sought for rejection of I.A.No.10.

4. Heard the arguments on learned counsel for appearing for parties and perused the materials on record.

5. Now the following points arise for consideration of this court are:

1:- Whether the defendant No.9 has made out grounds for allowing I.A.No.10 and thereby

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permitting to her to file the written statement ?

2:- What Order ?

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

Point No.1 : In the Affirmative

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

REASONS

7. **Point No.1:** - This suit is filed by the plaintiff against the defendant for seeking the relief of partition and separate possession. Defendant No.9 is the appeared through his counsel for she not filed her written statement. When matter is posted for cross examination of PW-1, defendant No.9 filed I.A.No.10 along with written statement. The suit was more than 10 years old case, but now defendant No.9 has filed application for seeking a permission for filed written statement. Defendant No.9 stated in her affidavit that, she is busy in her agricultural work and also she has suffering from ill-health since long time. Hence, she is unable to contact her counsel to give instruction for preparing the written statement to be filed within prescribed time.

8. Plaintiff counsel objected that, defendant No.9, the reasons mentioned in her affidavit is not a proper ground to allow this application. Defendant No.9 failed to filed her written statement within prescribed time of law. The arguments canvassed by the both the

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counsel this court is of opinion that, the reasons given by the defendant No.9 is accepted. No doubt there is a delay of 10 years to file a written statement. But that is not the solo ground to reject the application. The delay in filing the written statement may be compensated to the plaintiff by way of awarding cost. Another important aspect to be noted is that, the defendant No.9 has filed written statement along with I.A.No.10. Hence, this court is of the opinion that, instead of looking into the technicalities and in order to adjudicate the dispute effectively it is just and necessary to allow the applications on cost and take the written statement on record. With these observations, this court has answered the point No.1 in the Affirmative.

9. **Point No.2:** - In view of my findings on Point No.1, I proceed to pass the following

ORDER

The I.A. No.10 filed by the learned counsel for defendant No.9 U/Sec.151 of CPC, for seeking a permission of the court to file the written statement is hereby allowed on cost of Rs.1000/-.

The written statement of defendant No.9 is taken on record.

For additional issues and objection to I.A.No.11.

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(Dictated to the Stenographer directly on the computer, typed by him, script revised and corrected and then pronounced by me in the Open Court on this 10th day of January-2025).

(Kashinath V. Uppar)
Civil Judge & JMFC,
Jewargi.

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