

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC, MALUR
Dated this the 14th day of July 2014.

Present:
Sri. A.K.Nagarajappa, B.Com., L.L.B.
Senior Civil Judge & JMFC, Malur

O.S. NO.263/2011
(Old OS No.462/2007)

Plaintiff : Venkatappa,
S/o late Muniswamy,
Aged about 65 years,
R/o Lakkur Village & Hobli,
Malur Taluk.

(By Sri.**S.M.G.**, Advocate)

V/s

Defendants : 1. Radhabai,
W/o H.K.Nagaraju,
Aged about 65 years,
R/o No.154/1, II main Road,
Nagappa Block, Sirmapura,
Bangalore – 560 021.

2. Srishantha,
S/o Anathachar,
R/o No.53/80 Survey Street,
Ward No.50,
Bandunavara Beedi,
Basavanagudi,
Bangalore – 4.

3. Radhamma,
W/o Nagaraj,
Aged about 34 years,
R/o Pura Village, Lakkur Hobli,
Malur Taluk.

(Defendant No.1 & 3 by Sri.**R.C.A.**,
Advocate, D-3 Exparte)

ORDERS ON I.A-15

Applicant / plaintiff has filed this I.A u/s151 of CPC seeking permission to file written statement. He has also filed affidavit along with said I.A stating that her vendor 1st defendant has already filed written statement and in her written statement has contended that she sold suit item No.1 in favour of 3rd defendant. As on the date of filing of suit she was not impleaded but subsequently impleaded as 3rd defendant. Thereafter, she could not contact her counsel and instruct to file written statement as she was under the impression that her counsel filed written statement but he did not file written statement the delay in filing written statement is not intentional or deliberate but it is a bonafide reasons and she is having good case on merits. If the application is allowed no prejudice will be caused to the other side. Hence, she prayed for allow the I.A.

2. On the other hand, opponent / plaintiff has filed objections contending that I.A itself not maintainable, issues already framed, plaintiff has also lead his evidence and he has been cross-examined. The defendant no.3 kept quit by watching the proceedings but not filed written statement. Now she has come up with this false application with an intention to drag on the proceedings. The husband of the 3rd defendant has purchased the land sy.no.16/2 and in the said sale deed husband of defendant has admitted that suit schedule property is towards northern side of his property. Though the said fact was very much within the knowledge of the defendant no.3 she has intentionally kept quite all these days with a sole intention to harass the plaintiff. In fact one Thulasi Bai died without marriage and she has stated that she has purchased the property from Radhamma D/o Thulasibai in fact

the said Thulasibai died as twinster and hence, the plaintiff is making arrangements to take criminal action against the defendant no.1. The application filed by the defendant no.3 is after lapse of two years without seeking condonation of delay and hence, he prayed for dismiss the I.A.

3. Heard the arguments, perused the material placed on record, the following points that would arise for my consideration :-

1. Whether applicant / 3rd defendant is entitled to file written statement?

2. What order?

4. My findings to the above points are as follows:

Point No.1 : In the **Affirmative**

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

REASONS

5. Point No.1 :-

Admittedly, plaintiff has filed this suit against the defendants for seeking declaratory decree to declare that he is the owner of the suit schedule properties and also sought for permanent injunction. It is also undisputed fact that as on the date of filing of this suit defendant no.3 was not impleaded but subsequently impleaded as 3rd defendant

in view of the application filed by the plaintiff. Now defendant has contended that she thought that her counsel already filed written statement but she came to know recently that written statement was not filed and hence, the delay is not intentional. If the application not allowed her right will be curtail etc., On the other hand, plaintiff has denied the reasons putforth by the 3rd defendant but with an intention to drag on the proceedings though well knowledge about the proceedings she did not filed written statement etc., Further plaintiff counsel cited decision reported in **(2009) 3 SCC (Mohammed Yusuf V/s Faij Mohammad & others)** and **(2005) 4 SCC 480 (Kailash V/s Nanhku & others)**. When I gone through the said decisions in detail facts of the said decisions and present case on hand is entirely different. Because in the said decision after lapse of three years the written statement has been filed. Further Hon'ble apex court has observed that the defendant may be permitted to file written statement after expiry of 90 days only in exceptional situations.

6. Whereas in the decision of Kailash V/s Nanhku and others case also Hon'ble apex court has observed that by imposing cost receiving the written statement after expiry of 90 days will compensate inconvenience caused to the plaintiff. Whereas in the present case on hand also the nature of suit is one for declaration of title and defendant no.3 is a purchaser of the suit property the presence of defendant no.3 as well as written statement of defendant no.3 is very much necessary to determine the real controversy between the parties and hence in view of the decisions there is no bar in exceptional cases to receive the written statement by impose cost. In the result, the said decisions are helpful to the case of the defendant no.3 at this stage.

Further defendant counsel cited another decision **2014(1) ICC 844 (Satwant Kaur & another V/s Parsin Kaur & another)** Wherein lordship observed that the period of 90 days to file written statement is not a mandatory but it is a directory in nature. Whereas in the decision reported in **ILR 2005 KAR 4555 (Abdul Salim Bar Association Tamil Nadu V/s Union of India)** lordship observed that in a exceptional and hard cases after expiry of 90 days also can receive written statement by imposing cost. The said decision referred Satwant Kaur & another V/s Parsin Kaur & another case. Hence, in order to avoid multiplicity of proceeding and delay and in the interest of justice and equity, if the I.A is allowed by impose cost it will compensate the inconvenience caused to the other side. Hence, I am of the considered opinion that the written statement of the defendant no.3 can be taken on file subject to payment of cost. Even though earlier written statement of defendants taken has not filed but in view of the application filed by the defendant itself sufficient to taken the written statement of defendant by recalling the said order and there is no need to file separate application for condonation of delay in filing written statement in the interest of justice and equity. In the result, I answer point No.1 is in the **Affirmative**.

7. Point no.4 :-

For the foregoing reasons and discussion and considering the findings on above point I.A filed by the applicant / defendant no.3 is deserves to be allowed by imposing cost under the above circumstances. Accordingly, I proceed to pass the following;

ORDER

**I.A.XV filed by applicant / defendant no.3
u/s 151 of CPC is hereby allowed on cost of
Rs.600/-.**

(Dictated to stenographer, transcribed and computerized by him, revised, corrected and then pronounced by me in the open court, on this the 14th day of July 2014)

(A.K.Nagarajappa)
Senior Civil Judge, & JMFC Malur.

Order pronounced in the open court
(Vide separate order)

O R D E R

**I.A.XV filed by applicant /
defendant no.3 u/s 151 of CPC is hereby
allowed on cost of Rs.600/-.**

Senior Civil Judge, Malur.