**KAKL40-000030-2016**

**IN THE COURT OF THE PRL. CIVIL JUDGE AND JMFC., MULBAGAL**.

**Present:**

**Sri. HAJIHUSENSAB YADAWAD *B.Com, LL.B*,**
Prl. Civil Judge & JMFC,
Mulbagal.

Dated this the 18th day of April - 2022

**FDP No. 01/2016**

**Petitioners:** **Jayamma since died Rep. By her LR's**

**V/s**

**Respondents:** **Lakshmakka & others**

**Parties to I.A.No.VIII**

**Applicant/ Res. No.14 :** **Kalavathi @ Kalamma**

(By **Sri. Manikanta.S -** Advocate)

**V/s**

**Opponents/ Petitioners :** **Jayamma since died Rep. By her LR's**

(By **Sri. M.L.Venkatesh -** Advocate)

**ORDER ON I.A. No.VIII**

Sri. Manikanta.S Adv. filed IA No.VIII U/O IX Rule 7

R/w Sec.151 of CPC to set aside exparte order passed against Respondent No.14 and also filed Wakalath on behalf of Respondent No.14.

**2.** The said application is accompanied with an affidavit of Respondent No.14 wherein she contended that, the present proceedings are subject matter of OS No.318/2015 which was filed for the relief of Partition and Separate Possession. Further it is contended that, she has come to her parental house at Mulbagal on 10-04-2022 to attend the Srirama Navami Pooja Celebrations, then she came to know that, on 07-04-2022 some Survey Officials, as Court Commissioner have surveyed the land bearing Sy.No.108/1. Further, she is illiterate and having no educational qualification. Further it is contended that, on cross verification she came to know about the suit OS No.318/2015 wherein she has placed exparte. Further, came to know about exparte preliminary decree passed in OS No.318/2015.

**3.** Now after marriage, Respondent No.14 was permanently residing at 2nd Ward, 9th Division, Sanjayanagara, Doddaballapura, Bengaluru Rural – 561203, along with her family members. It is her contention that, she has

purchased an extent of 1 acre 5 ½ guntas out of total extent in Sy.No.108 of Kadaripura Village, Kasaba Hobli, Mulbagal Taluk from its owners on 10-07-2006 through Registered Sale Deed dated 10-07-2006. Since the date of purchase she is in possession and enjoyment the purchased extent out of Sy.No.108 which is also one of the petition schedule properties in the present petition. Along with application, the Respondent No.14 has produced the xerox copy of Sale Deed executed on 10-07-2006. Thereby the Respondent No.14 prayed to allow the application.

**4.** On the contrary, counsel for Petitioners filed objections and contended that, the application is not maintainable either in law or on facts and submitted that, the Respondent No.14 has already been placed exparte. From 21-10-2016 till today, the Respondent No.14 has failed to attend this court and also failed to file objections to the present petition though she is permanently residing at Palligarapalya, Mulbagal Town. Now, she has engaged the counsel and filed this application with an intention to drag the case. Further, it is contended that, the Respondent No.14 made false allegations in the affidavit with an intention to give trouble to the Petitioners. Further, the Court Commissioner has

already surveyed the suit schedule properties and demarcated the share of respective parties to the Petition. On these grounds, the Petitioners prayed to reject the application.

**5.** I have heard the arguments of both sides.

**6.** Upon hearing arguments and on perusal of materials placed on record the following points that would arise for my consideration.

1) **Whether the Respondent No.14 has made out sufficient grounds to set aside exparte order dated 21-10-2016?**

2) **What order?**

**7.** My findings to the above points are as under:

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

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

## REASONS

**8.** **POINT No.1:** The present petition has been filed as per Decree passed in OS No.318/2014, but the Respondent No.14 mentioned it as OS No.318/2015 in her application which is not correct. After filing of petition, this court has issued notices to all parties wherein notice on Main Petition

issued against Respondent No.14 has also returned as served upon the brother of Respondent No.14. Thereby this court rightly has placed exparte, the Respondent No.14 by its order dated 21-10-2016. Since then till filing of IA No.VIII, the Respondent No.14 has not attended this court.

**9.** Further it is contended by Respondent No.14 that, the Court Commissioner has surveyed the properties and demarcated the shares of Petitioners and rest of the Respondents and has already filed Commissioner Report on 08-04-2022. It is the contention of Respondent No.14 that, when she came to her parental house at Mulbagal Town to Celebrate Srirama Navami Pooja, then only she came to know about the fact that, one of the survey official has surveyed the suit Sy.No.108 wherein she has also purchased part of the land. While submitting arguments, the counsel for Respondent No.14 produced RTC pertaining to Sy.No.108/1 for the year 2021-22 wherein the name of Respondent No.14 finds place at column No.9 to an extent of 1.05.08 acres. On further perusal of records, it is noted that, the Court Commissioner has issued prior notice to the Respondent No.14 which was returned with an endorsement stating that, the party is not in station, hence returned to the sender.

**10.** On further perusal, it is noted that, the Court Commissioner has surveyed Sy.No.108 with regard to whole extent of 2 acre 11 guntas wherein the purchased property of Respondent No.14 is also situated. Though the notice was served by the brother of Respondent No.14, the Respondent No.14 has not appeared before this court within the date fixed by this court. However at later stage she has approached this Hon'ble Court with a prior to set aside exparte order and with a grievance that Sy.No.108 also includes her purchase property. Along with application, she has produced the xerox copy of Sale Deed dated 10-07-2006 wherein the residential address of Respondent No.14 is shown as Mulbagal Town. But, the Respondent No.14 has also produced the xerox copy of Adhar Card wherein her residential address is shown as Doddaballapura Town of Bengaluru Rural District. However, now the Respondent No.14 has appeared before this court along with her grievance stating that, she has also purchased some extent out of survey number of 108 which is also mentioned as petition schedule property.

**11.** It is very interesting to note that, the Respondent No.14 is none-other-than representing the branch of Abbulappa

along with Respondent No.12, 13, 15 and 16. On further perusal of preliminary decree passed in OS No.318/2014 it is noted that, the 1/9th share has jointly been allotted in favour of Defendant Nos.12 to 16 who are Respondent Nos.12 to 16 of present petition. It is clear that, the Respondent No.14 is also having 1/9th share jointly along with Defendant Nos.12, 13, 15 and 16. At this stage the Respondent No.14 has not clarified about filing of any appeal by her challenging the preliminary decree passed by this court in OS No.318/2014. However, the Respondent No.14 has come along with her defence stating that, she has purchased 1 acre 25 ½ guntas out of Sy.No.108 through Registered Sale Deed dated 10-07-2006, but has not mentioned the name of vendors from whom she has purchased the said extent out of Sy.No.108. However she has approached this court seeking to set aside exparte order passed against her and with a submission for having her separate defence with regard to Sy.No.108 as petition schedule property.

**12.** Therefore, in the interest of justice and equity one fair opportunity may be given to her on imposing costs. Therefore on going through above discussion there are

sufficient grounds available to set aside exparte order. Hence, I answer **Point No.1 in the Affirmative.**

**13. POINT No.2:** In view of my answer on point No.1, I proceed to pass the following;

## ORDER

**The IA No.VIII filed by the Respondent No.14 U/O IX Rule 7 R/w Sec.151 of CPC is hereby allowed on costs of Rs.2,000/-.**

**The Respondent No.14 shall pay the costs in favour of Petitioners within the next date of hearing.**

*(Dictated to the Steno on computer, typed by him, revised, corrected and then pronounced by me in open Court, on this 18th day of April, 2022)*

**Sd/-**
**Prl. Civil Judge and J.M.F.C.**
**Mulbagal.**