

ORDERS ON I.A. No.XII

I.A. No.XII filed by the learned counsel for defendant No.3 and 4 U/s 151 of C.P.C to permit him to file written statement of defendant No. 3 and 4.

2. In the annexed affidavit the defendant No.4 has stated that already oral partition effected between the joint family members. Hence, plaintiff has given assurance to settle the dispute out of the court. Hence, Defendant No.3 and 4 could not able to file written statement within stipulated time. The delay in filing written statement is not intentional and bonafide one. Hence, he has filed present application for seeking permission to file written statement.

3. Per contra, plaintiff has filed his detailed objection and contended that after long gap defendant No.3 and 4 have filed present application. Hence, application filed by the defendant No.3 and 4 is not maintainable. Further defendant No.3 has not filed separate application for seeking permission. Hence, application is not maintainable and he has denied entire avarement of the affidavit has false. Further he has contended that defendant No.3 and 4 have appeared before the court on 16.03.2023. However, they fail to file the written statement within reasonable time. Now case is pending for arguments on merits. Hence, application is not

maintainable and liable to be dismissed. Hence, prays for reject the application.

4. Heard arguments. Perused the application and materials available on record.

5. The following points would arise for consideration of this Court.

1. Whether the application filed by the counsel for the defendant No.3 and 4 is deserve to be allowed?

2. What order?

6. My answer to the above point as follows;

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

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

REASONS

7. **Point No.1:** Basically above suit is for Partition and separate possession. Now counsel for defendant No.3 and 4 has filed present application seeking permission to file his written statement.

8. It is the contention of the defendant No.3 and 4 that the plaintiff has assured that he settled the dispute out of court. Hence, they have not filed written statement. Hence, filing of written statement is necessary to set up their defence. Hence, prays for allow the application.

9. On the other hand, plaintiff has contended that defendant No.3 and 4 have filed present application at belated stage. Hence, prays for reject the application.

10. On perusal of the records it appears that defendant No.3 and 4 have put their appearance on 06.04.2023 and written statement of defendant No.3 and 4 is taken as not filed on 21.04.2023.

11. It is well settled that in view of natural justice the court has to consider both the sides. Court cannot pass a decree effectively on the basis of non-filing of written statement. Enquiry of both the parties is very much necessary for the fair adjudication of the case.

12. In a decision reported in **(2005) 4 SCC 480, (between Kailash V. Nanhku)** Hon'ble Apex Court held that,

“In spite of the time-limit appointed by Order 8 Rule 1 having expired, the court is not powerless to permit a written statement being filed if the court may require such written statement. Under Order 8 Rule 10, the court need not necessarily pronounce judgment against the defendant who failed to file written statement as required by Order 8 Rule 1 or Rule 9. The court may still make such other order in relation to the suit, as it thinks fit.”

13. Therefore, I am of the opinion that if this application is allowed no hardship will be caused to the plaintiff. If any causes it may be compensate on imposing certain cost on the defendant No.3 and 4. It is pertinent to note that the defendant No.3 and 4 have filed present application at belated stage. Hence, it is fit case to impose heavy

cost on them. Accordingly, I answer Point No.1 in the **Affirmative.**

14. **Point No.2:** For the above discussion court proceeds to pass the following.

ORDER

I.A. No.XII is allowed with cost of Rs.3000/-

The defendant No.3 and 4 are hereby permitted to file their written statement.

Written statement filed by the defendant No.3 and 4 is taken on record.

Issues framed. For plaintiff evidence by 16.06.2025.

(DEVARAJU H.R.)
Addl.sr. C.J. and J.M.F.C.,
K.R.Pete.