

KAMS300014832016



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE
AND JMFC AT HUNSUR**

Present: Smt.Anitha, B.A. (Law) L.L.B.,
Addl. Senior Civil Judge & JMFC.,
Hunsur.

Dated this the 15th day of October 2024.

OS No.117/2016

Petitioner: Smt.A.K.Geethakumari,
D/o Late B.Kempegowda,
W/o Sri.Ramakrishnegowda,
Aged 50 years, R/at Door No.265,
Opposite Mini Vidhana Soudha,
Vidyanagara, H.D.Kote Town,
Mysuru District.

-Vs-

Defendants: 1. Kendagannegowda, S/o Late B.Kempegowda,
Aged about 55 years,
2. Sri.K.Santharaju, S/o Late B.Kempegowda,
Aged about 53 years,
3. Sri.Kumar @ Vinayakumargowda,
S/o K.Santharaju, Aged about 25 years,

Defendants No.1 to 3 are residing
at Aswalu village, Bilikere Hobli,
Hunsur Taluk, Mysore District.

1.	Provision under which the applications are filed	:	Under Order 16 Rule 1 and 2 of CPC
2.	Relief sought for	:	To condone the delay in filing the list of witnesses
3.	The date on which the applications are filed	:	03.09.2024
4.	Number of the applications	:	IA No.XVII
5.	The date on which the objections are filed by different opponents	:	12.09.2024
6.	The date on which the orders passed on the said applications	:	15.10.2024

ORDERS PASSED ON IA NO.XVII

The learned counsel for the 2nd defendant filed the present application under Order 16 Rule 1 and 2 of CPC to condone the delay in filing the list of witnesses and to permit the 2nd defendant to file the same.

2. The application is supported with the affidavit of the 2nd defendant wherein it is stated that, the plaintiff filed the suit against the defendants for partition and separate possession over the suit schedule properties. The witnesses are very much necessary to consider his defence. The non-filing of witness list earlier was not intentional but for bonafide reasons. The correct address of the witnesses traced out recently. If the application is not allowed he will be put to much hardship and inconvenience. On the other-hand no

harm or injury will be caused to the other side. Hence, prayed to allow the application.

3. On the other-hand the plaintiff counsel filed the objection contending that, the application is not maintainable under law or on facts. The application is supported with false affidavit of the 2nd defendant. In the affidavit the 2nd defendant not stated about the reasons for examining the witnesses. Already the evidence of parties has been concluded and the case should have been posted for arguments. At this stage this application is filed. It is further contended that, at the time of cross-examination of DW2 by the plaintiff, the 1st defendant stated that, there is no partition between the plaintiff and the defendants. On the other-hand, he has also stated that, during the life-time of his father there is no partition. It is further contended that, in the written statement the 2nd defendant stated about registered Will executed by his father and in the affidavit also the same names have been mentioned. It is further contended that, the suit is of the year 2016 and in order to delay the proceedings this application is filed. Hence, prayed to dismiss the application with costs.

4. Thereafter, heard arguments addressed by learned counsels for the 2nd defendant and the plaintiff and perused the entire case papers. After hearing the arguments and on

perusal of the case papers, the point that arise for consideration are as hereunder:

POINTS

1. Whether the 2nd defendant has made out sufficient grounds to condone the delay in filing the witness list?
2. What order?
5. The findings of the above points are as hereunder:

Point No.1: In the Affirmative

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

REASONS

6. **Point No.1:** This is the suit filed the plaintiff against the defendants seeking the relief of partition and separate possession of her 1/3rd share in the suit schedule properties. It is an admitted fact that, the plaintiff and defendants No.1 and 2 are sister and brothers to each other. It is also an admitted fact that, father of the plaintiff and defendants No.1 and 2 by name B.Kempegowda is the original propositus of the family. The 3rd defendant is none other than the son of 2nd defendant. It is the specific case of the plaintiff that, the suit schedule properties are the joint family properties of herself as well as defendants No.1 and 2 and they are the members of Hindu Undivided family and all the suit schedule properties are the joint family properties. It is her

specific case that, her father acquired suit schedule item No.4 to 18 properties by way of purchase by using the nucleus of the family. On her demand with the defendants to effect partition, it was refused and it made her to bring this suit.

7. The 1st defendant filed separate written statement denying the entire case of the plaintiff. At para No.13 of the written statement the 1st defendant contended that, the suit schedule properties are ancestral and joint family properties and there is already a Panchayath Palu Parikath dated 19.07.2010 and the plaintiff was given with her share at the time of her marriage and prayed to decree the suit as per Panchayath Palu Parikath dated 19.07.2010. Further, initially defendants No.2 and 3 have filed joint written statement and thereafter the 3rd defendant filed separate written statement. In the written statement defendants No.2 and 3 have denied about the entire case of the plaintiff and admitted about the relationship. In the written statement the 1st defendant put forth about the registered Will executed by his father dated 24.04.2013 and 19.07.2012. It is the specific contention of the 2nd defendant that, on the basis of the Will the suit schedule properties have been allotted to defendants No.1 and 2 and they are absolute owners of said properties. The 2nd defendant also taken up the contention that, all the suit schedule

properties are the self-acquired properties of his father. The issues have been framed and already the parties have lead their evidence and when the case was posted for further evidence of the 2nd defendant this application has been filed.

8. It appears that, witnesses now sought to be examined by the 2nd defendant are the attesting witnesses to the alleged Will of his father. Admittedly, the original Will is not before the court. In the written statement the 2nd defendant contended that, after the death of his father the witnesses mentioned in the written statement have informed about the execution of registered Will by his father and on the search made in the house they could not able to trace out the original Will and as such the 2nd defendant obtained certified copy of the Will. In order to prove the execution of the Will the witnesses mentioned in the application are necessary to be examined. If they are examined no hardship is going to be caused to the plaintiff. On the other-hand the plaintiff will get an opportunity to cross-examine the said witnesses. Hence, this court comes to conclusion that, the 2nd defendant has made sufficient grounds to condone the delay in filing the witness list. Hence, Point No.1 is answered in the affirmative.

9. **Point No.2:** In view of the reasons discussed above this court proceeds to pass the following:

ORDER

IA No.XVII filed by the 2nd defendant under Order 16 Rule 1 and 2 of CPC is hereby allowed with costs of Rs.250/-.

Accordingly, the delay in filing the witness list is condoned and the witness list is hereby accepted.

(Dictated to the Stenographer, transcribed and computerized by her on the computer, transcript corrected and pronounced by me in the open court on this the 15th day of October, 2024)

(Anitha)

Addl. Senior Civil Judge and JMFC,
Hunsur.