

ORDER ON I.A NO.8 FILED U/S 151 OF C.P.C.

The 1st defendant namely Kanthegowda filed this application seeking permission to file the written statement by condoning the delay in filing the written statement.

2. On verifying the affidavit filed in support of the application, applicant has sworn the affidavit stating that, the plaintiffs preferred this suit for the relief of partition and separate possession in respect of the schedule properties. However, the defendant No.1 to 6 already sold and alienated the schedule property in the name and favour of the 7th defendant who intern sold again the same in favour of the 9th defendant. Further, in the earlier date of hearing he could not attend the court and file his written statement. Accordingly, he is seeking to condone the delay in approaching the court to file the written statement.

3. The plaintiff resisted and opposed the said application by filing objections stating that, the plaintiffs have filed the suit against the defendant for the partition when the case was posted for evidence. The 1st defendant after the lapse and gap of 2 years, they have appeared before this court and hence the application is time barred. Hence, prays for dismissal of the application.

4. Heard the counsel for the defendant as well as the plaintiff on the pleadings verified the pleadings of the application and objection.

5. The following points arise for this court's consideration.

1) Whether applicant/1st defendant has made out sufficient grounds for allowing the present application?

2) What Order?

6. This court findings on the above points for consideration are as under:

Point No.1: In the Affirmative

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

REASONS

7. POINT NO.1:

It is not in dispute that, the suit has been filed by the plaintiffs against the defendants seeking for the relief of partition and separate possession and the suit is of the year 2019 and the plaintiffs approached this court after considerable gap. However in the opinion of this court, nothing in the code shall deemed to be limit or otherwise effect the inherent power of the court to make such orders as may be necessary for the purpose and to avoid abuse of process of law. Though in the instant case, the statement has been filed after considerable gap, in the considered view and opinion of this court, if the defendants are not permitted to file their written statement against the pleadings of the plaint it will certainly causes greater implication and larger impact on the defendants.

8. However, either parties are to be properly provided opportunities so as to place their grievances before this court. As such considering the very fact that, the delay in filing the statement and approaching the court, this court can suitable impose cost on the defendant causing delay. However, the right of the defendants to file the objections cannot be curtailed for the reasons to delay which can be suitable compensated by way of cost. Hence, in the opinion of this court, the application is liable to be allowed. Hence, this court without further discussion proceeds to answer point No.1 in the **affirmative**.

9. POINT NO.2:

In view of the above discussion and reasons mentioned therein this court proceeds to pass the following:

ORDER

The I.A No.VIII filed by applicant/1st defendant U/s 151 of CPC is hereby allowed with cost of Rs.500/-.

Accordingly, the written statement of the defendant No.1 is considered and taken on record.

For compliance of Sec. 89 of CPC.

Call on 01.10.2024.

(Chandan.S)
Prl. Civil Judge & JMFC.,
K.R.Nagar.