

IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C., DEVADURGA

Present:
Sri.Hanumanth Satwik.,LL.M,

DATED : THIS THE 18th DAY OF JULY 2023

O.S.No.176/2022

- Plaintiffs:**
1. Noor sab S/o. Aayin Sab @ Aayinappa,
Age: 38 years, Occ: Hutti Gold Mins employee,
 2. Mounuddin S/o. Aayin Sab @ Aayinappa,
Age: 41 years, Occ: Hutti Gold Mins employee,
 3. Jainabhee @ Jainamma W/o. AayinSab
@ Aayinappa, Age: 63 years,
Occ: Hutti Gold Mins employee,
R/o. Budinal, Tq:Devadurga, Dist: Raichur.
Now at Hutti, Tq:Lingasugur, Dist:Raichur.
- (By Sri.R.K Advocate)

--V/s--

- Defendants:**
1. Haji Sab S/o. Late Yamanur Sab
@ Yamanappa, Age: 68 years,
Occ: Agriculture, R/o. Budinal village,
Tq:Devadurga, Dist: Raichur.
(By Sri.M.M.Advocate)
 2. Khasim Sab S/o. Late Yamanur Sab
@ Yamanappa, Age: 70 years,
Occ: Agriculture, R/o. Budinal village,
Tq:Devadurga, Dist: Raichur.
(By Sri.V.M.M.Advocate)

ORDER ON IA NO.3

The present suit is for partition.

2. The present application has been filed by defendant no.1 seeking permission of this court to allow him to file the written statement. The defendant submits that due to non-availability of the documents he could not file the written statement in time. In this regard, the defendant prays as above.

3. The plaintiff in his objection contended that the present application is not maintainable. This court gave the defendant sufficient to opportunity to file the written statement. No good and believable reasons have been shown to allow the application. In this regard, denying the application averments, the plaintiff prays to reject the application.

4. Heard arguments of defendant no.1 and plaintiff.

5. Considering the application and the objection following points arise for my consideration.

1. Whether defendant no.1 has made out a case for permitting him to file the written statement?

2. What order?

6. My findings for the above points are as under;

Point no.1 : In the affirmative
Point no.2 : As per final order
for the following ;

REASONS

7. **Point No.1:-** It is the case of defendant no.1 that because of non-availability of the documents he could not file the written statement in time.

8. In this regard, considering the application on hand, I am of the view that the right of the defendant to put-forth his defence cannot be curtailed, as the same amounts to curtailing the rights of the defendant to defend his case. Considering the application, I am of the further view that the plaintiff will not suffer any injury if the present application is allowed as he can contest the matter and get the same decided on merits. This being the case it is not just and proper to curtail the rights of defendant no.1 from filing written statement.

9. On perusal of the application it reflects that, due to non-availability of the documents the defendant could file the written statement within the stipulated time period. Having regard to the delay occurred in filing the written statement, I am satisfied with

the reasons made out by defendant no.1 in not filing the written statement within the stipulated time period.

10. That apart, it is to be noted that it is settled principle of law that the procedural law is hand maid of justice and procedural law should not be construed strictly so as to undermine justice. For this I rely on the decision of Hon'ble Supreme Court of India between Salem Advocates' Bar Association v. Union of India cited in AIR 2005 SC 3353 wherein it was held thus;

“The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules or procedure are handmaid of justice and not its mistress”.

Further, it is settled principle of law that a litigation should not be terminated by default, either of the plaintiff or defendant. In this regard I am supported by the decision of Hon'ble Supreme Court of India between Robin Thapa V. Rohit Dora (Civil Appeal No.4507 of 2019), wherein Hon'ble Court held thus;

“Ordinarily, a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits.”

In view of the law laid down by the Hon'ble Supreme Court of India and considering the delay occurred in filing the written statement, I am of the view that there is no impediment to allow the application and to permit defendant no.1 to file written statement. In this view of the matter, the contentions raised by the plaintiff are of no avail to him.

11. It is to be considered that if the present application is not allowed defendant no.1 cannot put-forth his defence and hence the inconvenience which may be caused to him is more than the inconvenience which may be caused to the plaintiff, if the application is allowed. Further, if the application is not allowed the injury which may be caused to the defendant cannot be compensated at any cost, on the other hand, the plaintiff has the

Order

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opportunity to contest the matter and get the same decided on merits. Considering the facts and circumstances of the case and for the reasons stated above and in the interest of justice and equity I decide point no.1 in the affirmative.

12. **Point no.2** : - In view of reasons on point No.1, I proceed to pass the following;

ORDER

IA No.3 filed by defendant no.1 is hereby
allowed on cost of Rs.100/-.

(Dictated to the stenographer, directly on the computer typed by him corrected by me and then pronounced in the open court on this the 18th day of July 2023)

(Hanumanth Satwik)
Senior Civil Judge & JMFC.,
Devadurga.