

KARN220006922006



**IN THE COURT OF THE PRL.CIVIL JUDGE & JMFC.,**

**AT CHANNAPATNA.**

**PRESENT: SRI.MAHENDRA.M** B.A, LL.B.,  
Prl. Civil Judge & JMFC,  
Channapatna.

**Dated this 2<sup>nd</sup> day of November-2023**

**O.S. NO.87/2006**

**PLAINTIFFS** : Smt.Sowbhagya & Another  
-V/s-

**DEFENDANTS** : Sri.Nathgowda & Others

**I.A.No.VIII**

**APPLICANT**

**DEFENDANT NO.2(c)** : Sri.T.Venkatesh,  
S/o Late Thimmegowda,  
Aged about 54 years,

R/at Maganur Village,  
Maluru Hobli,  
Channapatna Taluk,  
Ramanagara District.

**(By Sri.M.M., Advocate)**

-V/s-

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OPPONENTS/PLAINTIFFS

- : 1. Smt.Sowbhagya,  
W/o Ramachandra,  
Aged about 40 years,
2. Sri.H.Ramachandra,  
S/o Late Karichannegowda,  
Aged about 53 years,

Both are R/at Hosurudoddi Village,  
Hamlet of M.B.Halli,  
Maluru Hobli,  
Channapatna Taluk,  
Ramanagara District.

(By Sri.K.T.T., Advocate)

|     |                                                                         |                                                    |
|-----|-------------------------------------------------------------------------|----------------------------------------------------|
| I   | <i>Provision under which the application is filed</i>                   | <i>U/Sec.151 of CPC</i>                            |
| II  | <i>Relief sought for</i>                                                | <i>Permit to file Additional Written Statement</i> |
| III | <i>The date on which the application is filed</i>                       | <i>07.10.2023</i>                                  |
| IV  | <i>Number of the application</i>                                        | <i>I A No.VIII</i>                                 |
| V   | <i>The date on which the objection are filed by deferent opponents</i>  | <i>12.10.2023</i>                                  |
| VI  | <i>The date on which the orders were passed on the said application</i> | <i>02.11.2023</i>                                  |

Sd/-  
(Sri.Mahendra M.)  
Prl. Civil Judge & JMFC.,  
Channapatna.

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**ORDERS ON IA.No.VIII**

This is an application filed by the defendant No.2(c) under Sec.151 of C.P.C. seeking condone the delay in filing the additional written statement.

**2. The averments of the affidavit filed in support of the application are as follows:-**

The plaintiffs have filed this suit for the relief of declaration and possession of the suit schedule property. After the death of defendant No.2 the legal heirs are brought on record. After receipt of notice the defendant No.2(c) contacted his advocate and came to know all the facts and circumstances of the case. After gone through the case the defendant No.2(c) realized that the real facts are to be brought to the notice of the case, which are not brought to the notice of the court in the plaint as well as in the written statement. In the previous hearing date the defendant No.2(c) could not file the additional written statement. If this application is not allowed the defendant No.2(c) will be put to irreparable loss and injury which cannot be compensated. **Hence filed I.A No.VIII.**

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3. The counsel for the plaintiffs has filed an objection to I.A.No.VIII and contended that, the application filed by the defendant No.2(c) is not maintainable either in law or on facts the same is liable to be dismissed in limine. The plaintiffs further contended that, the original defendant No.2 and 4 filed their written statement jointly on 22.01.2007. This court has been framed the issues and recording the evidence of both the parties and passed the decree. The defendants filed an appeal before Hon'ble Appellant Court in R.A No.36/2015. The Hon'ble Appellant Court remanded the matter before trail court and directing the receive the documents from the defendants and further directed to appoint the technical person as a court commissioner to measure the property. The original defendants already filed the written statement, after their death the question of filing additional written statement does not arise at all. **Hence, IA.No.VIII is deserve to be dismissed with cost.**

4. Heard the arguments from the counsel for plaintiffs and defendant No.2(c) and perused the records.

5. The following points are arise for consideration of this court:-

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### **POINTS**

1. Whether the applicant/defendant No.2(c) proves that, IA.No.VIII is deserves to be allowed?
2. What order?

6. The answer of this court to the above points are as follows:-

**Point No.1: In the Negative**  
**Point No.2: As per final order**  
**for the following:-**

### **REASONS**

7. **Point No.1:-** The defendant No.2(c) has filed present application seeking permit to file the additional written statement by condone the delay. Now the case is posted for defendants evidence. At this stage the defendant No.2(c) has filed present application. The plaintiffs have filed an objection to the application and contended that, the application filed by the defendant No.2(c) is not maintainable either in law or on facts.

8. The plaintiffs have filed this suit against the defendants for the relief of declaration and recovery of possession of suit schedule property. The present suit already disposed by this court on merits.

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After disposal of the present suit, the defendants have preferred an appeal before Hon'ble Senior Civil Judge and JMFC, Channapatna by filing in R.A No.36/2015. The Hon'ble Appellant Court remand the present suit before this court and directed to this court to receive the documents from defendants and appoint the technical person as a court commissioner to measure the suit schedule property.

9. After remand the suit, the parties are appeared before this court through their counsel. Now the defendant No.2(c) has filed present application seeking permit to file additional written statement. The original defendant No.2 has been filed his written statement on 22.01.2007. After the death of original defendant No.2 the legal heirs are intended to file the additional written statement. The legal heirs of defendant No.2 are steps into the shoes of deceased person, they can proceed the matter from the stage where it is, they can not file the written statement. The original defendant No.2 already filed his written statement, hence, the filing of additional written statement does not arise at all. Now circumstances of the case not changed. The defendant No.2(c) is intended to file the additional written statement with new facts, it is not maintainable. The application filed by the defendant No.2(c) is not maintainable under the law, the same is deserves to be dismissed. **Hence, answer the Point No.I in the Negative.**

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10. **Point No.2:-** For the above reasons I proceed to the pass the following:-

**ORDER**

The IA.No.VIII filed by the  
defendant No.2(c) under Sec.151 of  
CPC is hereby dismissed with cost of  
Rs.300/-.

(Dictated to the Stenographer and transcribed by her, Order corrected  
and signed by me, then pronounced by me in the Open Court on this the 2<sup>nd</sup>  
day of November-2023).

Sd/-  
(Sri.Mahendra M.)  
Prl Civil Judge & J.M.F.C.,  
Channapatna.

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Order pronounced in open court

(Vide Separate Order sheet)

O R D E R

The IA.No.VIII filed by the defendant No.2(c) under Sec.151 of CPC is hereby dismissed with cost of Rs.300/-.

Sd/-

Prl. Civil Judge & JMFC.,  
Channapatna.