

IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE & J.M.F.C.,
AT:MAGADI

Present:

Sri. Hanumanth Satwik., LL.M,
Addl. Senior Civil Judge & JMFC., Magadi

DATED: THIS THE 17th DAY OF AUGUST 2021

O.S.No.16/2017

- Plaintiffs** : 1. Smt. Jayamma,
W/o. Late. Hanumanthaiah,
Aged about 60 years,
2. Smt. Sunanda,
D/o. Late. Hanumanthaiah,
W/o. Shivaramaiah,
Aged about 40 years,
3. Kantharaj,
S/o. Late. Hanumanthaiah,
Aged about 33 years,
4. Smt. Jayalakshmi @ Jayalakshamma,
D/o. Late. Hanumanthaiah,
W/o. Narasimhamurthy,
Aged about 30 years,
5. Vijay Kumar,
S/o. Late. Hanumanthaiah,
Aged about 28 years,
6. Smt. Bhagya,
D/o. Late. Hanumanthaiah,
W/o. Chandrashekaraiyah,
Aged about 25 years,

All are R/at: Mallanapalya,
Solur Village & Hobli,
Magadi Taluk, Ramanagara District.

(By Sri. **A.K.**, Advocate)

--- V/s ---

- Defendants** :
1. Tahasildar,
Magadi Taluk,
Ramanagara District.
 2. Assistant Commissioner,
Ramanagara Sub-Division,
Ramanagara District.
 3. Deputy Commissioner,
Ramanagara District.
 4. Chief Secretary,
Government of Karnataka,
Vidhana Soudha,
Ambedkar Veedhi,
Bangalore – 560 001.
 5. Gundarao,
S/o. Late. Ramarao,
Major,
R/at: Yeshwanthpura,
Bangalore – 560022.
 6. Sri. Srinivas,
S/o. Ganguddaiah,
Aged about 50 years,
 7. Sri. Venkatappa,
S/o. Muniyappa,
Aged about 72 years,
 8. Sri. Dasegowda,
S/o. Late. Thimmaiah,
Aged about 72 years,
 9. Sri. Basavaraju,
S/o. Basaiah,
Aged about 65 years,
 10. Sri. Lakshminarayana,
S/o. Seetharamaiah,

Aged about 35 years,

11. Sri. Jagadeesh,
S/o. Siddagangaiah,
Aged about 32 years,
12. Sri. Nagesh,
S/o. Rajanna @ Kollapuraiah,
Aged about 32 years,
13. Sri. Ranganath,
S/o. Chikkaguddaiah,
Aged about 32 years,

D6 to 13 are R/at:
Mallanapalya Village,
Solur Village & Hobli,
Magadi Taluk, Ramanagara District.

(Defendant no.1 to 5 are placed exparte)
(D6 to 13 by **Sri. J.V.N. Advocate**)

ORDER ON IA NO.V

The present suit is for declaration and permanent injunction.

2. The present application has been filed by defendant no.6, 7, 9 to 13 seeking permission of this court to allow them to file the written statement. The defendants submit they came on record voluntarily. They collected some of the documents recently. As such, they could not file written statement after filing of amended plaint. In this regard, the defendants pray as above.

3. The plaintiffs in the objection contended that the delay in filing the application is not justified and it is not bonafide. The reasons given for delay in filing the written statement are vague. The defendants have knowledge and required documents. In spite of it they did not file written statement. Defendants no.13 cannot swear affidavit on behalf of other defendants. In this regard, the plaintiffs pray to reject the application.

4. Heard arguments of defendants and plaintiffs.

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

1. Whether defendant no.6, 7, 9 to 13 have made out a case for permitting them 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.6, 7, 9 to 13 that they came on record voluntarily. They collected some of the documents recently. As such, they could not file written statement after filing of amended plaint.

8. In this regard, considering the application on hand, I am of the view that the right of the defendants to put-forth their defence cannot be curtailed, as the same amounts to curtailing the rights of the defendants to defend their case. Considering the application, I am of the further view that the plaintiffs will not suffer any injury if the present application is allowed as they 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 the defendants from filing written statement.

9. On perusal of the application, it reflects that not securing documents has caused delay in filing the written statement. Having regard to the delay occurred in filing the written statement, I am satisfied with the reasons made out by defendant no.6, 7, 9 to 13 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 the defendants to file written statement. In this view of the matter, the contentions raised by the plaintiffs are of no avail to them.

11. It is to be considered that if the present application is not allowed defendant no.6, 7, 9 to 13 cannot put-forth their defence and hence the inconvenience which may be caused to them is more than the inconvenience which may be caused to the plaintiffs, if the application is allowed. Further, if the application is not allowed the injury which may be caused to the defendants cannot be compensated at any cost, on the other hand, the plaintiffs have the 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.V filed U/sec.151 of CPC filed by defendant
no.6, 7, 9 to 13 is hereby allowed on cost of Rs.200/-.

(Dictated to the stenographer, directly on the computer typed by her corrected by me and then pronounced in the open court on this the 17th day of August, 2021)

(Hanumanth Satwik)
Addl. Senior Civil Judge & JMFC.,
Magadi.