



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

:Present:

**Sri. Shivakumar R., B.A.L., LL.B.,
Addl. Senior Civil Judge & JMFC., Magadi**

DATED: THIS THE 3rd DAY OF JUNE, 2025
O.S. No.318/2016

PLAINTIFF : Smt. Gangamma,
D/o. Late. Uddandaiah,
W/o. Ramanarasaiah,
Aged about 71 years,
R/at: Vadhakunte Village,
Thyamagondlu Hobli,
Doddabelle Post,
Nelamangala Taluk,
Bangalore Rural District.
(By Sri. H.T.V., Advocate)

V/s

DEFENDANTS : 1. Smt. Venkatamadamma,
W/o. Channappa,
Aged about 58 years,
R/at: Somanahalli Village & Post,
Uttarahalli Hobli,
Bangalore South Taluk.
Since dead by her L.R.,

(a) Sri. Channappa,
Father name not known,
Aged about 71 years,
R/at: Somanahalli Village & Post,
Uttarahalli Hobli,
Bangalore South Taluk.
2. Smt. Gangamma,



W/o. Byrappa,
Aged about 55 years,
50 feet road,
Near Subrahmanya Temple,
Hanumanthanagar,
Bangalore.

3. Smt. Sanjeevamma,
W/o. Rangappa,
Thathaguni Village & Post,
Kengeri Hobli,
Bangalore South Taluk.
4. Sri. Uddandaiah,
S/o. Gurappa @ Uddandaiah,
Aged about 48 years,
R/at: Gangappanahalli,
Thippagundanahalli Post,
Bangalore South Taluk,
Bangalore Rural District.

(D1 Dead)
(D2(a, c, d & e Exparte)
(D3 by Sri. T.K.H. Advocate)
(D4 by Sri. P.S.H. Advocate)

ORDER ON I.A.No.10

APPLICANT : Smt. Gangamma

V/s

OPPONENTS : Sri. Channapa & Ors.,



The defendant No.4 has filed instant I.A.No.10 U/S.151 of C.P.C., praying to reopen the above case by permitting him to file written statement by condoning delay if any in the above case.

2. The I.A., supported with the affidavit of the defendant No.4. It is stated in the affidavit that, the Plaintiff has filed the above suit seeking for partition against Defendants. It is further stated that, the defendant No.4 has filed vakalath on 14-10-2019 and thereafter due to health issues and due to communication gap, the defendant No.4 was unable to contest the case effectively. Recently the defendant No.4 got enquired about the status of the case, came to know that the above case is posted for judgement. Later after not being satisfied with the service of the counsel, has obtained NOC from previous counsel and engaged new counsel and filing this application before this court.

3. It is further stated that, non - filing of written statement on last dates of hearing is not intentional one but due to above said bonafide reasons. The defendant No.4 has got good defence in the above case. An opportunity of being heard may be given to defendant No.4. If this application is not allowed, the defendant



No.4 will be put to irreparable loss and injury on the other hand no harm will be cause to the Plaintiff. Hence, this I.A.

4. The I.A., copy was served to the plaintiff's side. The plaintiff in her statement of objection denied the I.A., averments and interalia contended that, the above application filed by the defendant No.4 only to drag the proceedings not for contest the above matter. Therefore, the above application is deserves to be dismissed. The Plaintiff further contended that, the above suit filed by the plaintiff for seeking partition and separate possession of 1/4th share in respect of the suit Schedule Property. The above suit was filed in the year 2008 in O.S.No.198/2008 before the 2nd Addl. Civil Judge at Bengaluru. The Hon'ble Court was ordered to issue notice to the defendants, the notice was duly served to the defendants. After service of notice, Vakalath was filed by this 4th defendant on 21-06-2010 and no written statement was filed within a stipulated period. Hence , the Hon'ble 2nd Addl. Civil Judge has ordered that written statement has not filed by the this defendant No.4. Thereafter, the interlocutory application No.5 was filed under



section 151 of CPC to recall the order along with the written statement permitted him to file written statement on 29-03- 2012. The said L.A., was allowed on cost of Rs.300/-.

5. It is further contended that, thereafter the 2nd Addl. Civil Judge has framed the issues on 21-05-2012 and the above matter was posted for plaintiff evidence on 14-08-2012. Thereafter, the Affidavit by way of evidence was filed on 08-10-2012 and documents got marked by the plaintiff and the above matter was posted for further evidence of PW-1. The plaintiff also lead her further evidence and matter was posted for cross-examination for PW-1. The sufficient opportunities were given by the Hon'ble 2nd Addl. Civil Judge, Bengaluru to the defendants to cross-examine the PW-1. But the defendants utterly failed to cross-examine the PW-1. Thereafter, the Hon'ble Court has posted the matter for defendant evidence. Sufficient opportunity was given to lead their evidence but they have not lead their evidence also. Thereafter, due to set up of Senior Civil Judge in all the Taluk Courts the above matter was transferred from Bengaluru Rural Court to this Court.



6. It is further contended that, after transferring the above suit from Bengaluru Court to this Court the earlier evidence was discarded and lead fresh evidence by the plaintiff by way of examination in chief by way of Affidavit on 19-10-2022 and documents got marked. After examination of PW-1 no cross - examination was done by this defendant No.4. sufficient opportunity was given by this Court to cross-examine the PW-1, despite this defendant No.4 has not cross-examined the PW-1. Thereafter, this Court was pleased to post the above matter for defendant evidence, no evidence was lead by this defendant. Thereafter, the above matter was posted for arguments.

7. The Plaintiff further contended that, the plaintiff has argued the above matter and requested this Court to post the above matter for Judgment as this defendant has not seriously contested. Without considering request of the plaintiff, this Court adjourned, the above matter was posted for defendants' arguments. No arguments made by this defendants again to give one more chance to the defendant No.3 and the matter was adjourned to defendants' arguments. Though no one has come forward to argue the matter.



Thereafter, this Court passed an order that the defendant No.3 and 4 counsels are absent. Perused the order sheet, the defendant No.3 and 4 counsel are not addressed the arguments. No grounds to grant one more time hence the above matter is posted for Judgment. However, liberty is given to the defendant No.3 and counsels to submit written submission if any before the office on or before 11-04-2025, for Judgment by 16-04-2025.

8. It is further contented that, after posting for Judgment this defendants filed false, frivolous and vexatious application on 11-04-2025 for permitting him to filed written statement by condoning the delay if any. These defendant is not aware of the proceedings and did not have any interest to defend the case , even though he did not aware whether he filed written statement or not. Therefore, this facts clearly disclosed that only to harass and give trouble to the plaintiff, he filed the above false application after lapse of 15 years. Therefore , the above application is deserves to be dismissed on the payment of cost of Rs.25,000 /-. For all these grounds the plaintiff prays to reject the I.A., filed by the defendant No.4 with exemplary cost.



9. Heard the arguments of plaintiff's side. In spite of providing sufficient time, the counsel for the defendant No.4 has not addressed the arguments on I.A.No.10. No grounds to grant one more time. Hence the above matter is posted for orders on I.A.No.10. However, liberty is given to the defendant No.4 counsel to submit written submission if any before the Office on or before 03.05.2025. But, the counsel of the defendant No.4 failed to do so.

10. On perusal of the rival contentions and other materials placed on record, the following points arise for my consideration.

1. Whether the I.A.No.10 filed by the defendant No.4 is deserves to be allowed?
2. What order?
11. My findings for the above points are as follows.

Point No.1: In the Negative,

Point No.2: As per final order.

For the following,

REASONS

12. **POINT NO.1:-** It is the urge of the defendant No.4 that, he has filed the vakalath in the above matter through his counsel on 14.10.2019. Thereafter, due to his health issues and due to



communication gap, he was enable to contest the case effectively. Recently, he came to know that, the above matter was posted for Judgment. The defendant No.4 has not satisfied to the service of the prevision counsel and obtained NOC and engage new along with and filed this application to permit the defendant No.4 to condone the delay in filing the written statement for effective adjudication of the above matter.

13. On the other hand, the plaintiff contended that, the plaintiff has filed this suit for the relief of partition and separate possession against the defendants in respect of suit schedule properties before the 2nd Additional Civil Judge at Bangalore, the same is numbered as O.S.No.198/08. In pursuance of the suit summons, the defendant has appeared through his counsel fild the written statement on 29.03.2012. Thereafter, the case was transferred to this court. But the defendant No.4 has not cross-examined the PW-1 and he has not adduced evidence of defendant No.4 side and also not addressed the arguments of the defendant No.4's counsel. Now the mater the posted for Judgment. When the matter is posted for Judgment, the defendant No.4 filed this



frivious I.A., by suppressing the real facts only with an intention to drag the proceedings and also to harass the plaintiff.

14. On perusal of the materials placed on record, admittedly the plaintiff has filed this suit against the defendants for the relief of partition and separate possession in respect of suit schedule properties before the 2nd Addl. Civil Judge at Bangalore in O.S.No.198/2008. The defendant No.4 has appeared through his counsel and file the written statement on 29.03.2012. Later the above matter was transferred through this Court, but the defendant No.4 has not contested the above matter. Hence, the matter is posted for Judgment. At this stage, the defendant No.4 has come with an instant I.A., and sought permission to filed the written statement in the above matter to condone the delay if any. It is relevant to note that, the defendant No.4 on 29.03.2012 itself filed the written statement in O.S.No.198/2008. Under these facts and circumstances, the defendant No.4 cannot be permitted to file the written statement once again by condoning the dealy if any in the above matter does not arise. The defendant No.4 has filed this by suppressing the real facts before this Court only with an



intention to drag the proceedings. The act of the defendant No.4 is only but a abuse of due process of Law. Hence, the I.A.No.10 filed by the defendant No.4 is not tenable in the eye of Law. For considering all these reasons, this court answer the Point No.1 in the Negative.

15. **POINT NO.2:** In view of reasons on point No.1, I proceed to pass the following,

ORDER

IA No.10 filed by the defendant No.4 is
hereby rejected on payment of cost of Rs.3,000/-.

No order as to cost.

(Dictated to the Typist, transcribed & typed by her, corrected by me and then pronounced in the open court on this the **3rd day of JUNE, 2025.**)

(Shivakumar R.)
Addl. Sr. Civil Judge & JMFC.,
Magadi