

KARN410004702015



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

**Present:**

**Sri. Sandeep S. Reddy, B.A., LL.B.,  
Addl. Senior Civil Judge & JMFC., Magadi**

**DATED: THIS THE 5<sup>th</sup> DAY OF DECEMBER 2023**

**O.S.No. 256/2015**

**Plaintiffs** : Smt. Lakshamma & Ors.,

(By **Sri. A.S.S.** Advocate)

--- V/s ---

**Defendants** : Smt. Rangamma & Ors.,

(D1, 2, 4, 5, 6, 9, 10, 11, 13 to 16, 20 & 24 **Exparte**)  
(D28, 29 & 30 by **Sri. G.P.** Advocate)

**ORDER ON IA NO.VI**

The present suit is for partition, separate possession and consequential reliefs.

2. The aforesaid application is filed by defendant No.2, 4 to 6, 14 to 16 praying for setting aside the exparte order dated: 07.10.2015 and 27.03.2017 and permitting them to contest the aforesaid suit.



3. The defendant No.2 has filed the affidavit swearing on behalf of other applicants. The defendant No.2 states that, he recently came to know about the partition suit pending before this court through some villagers i.e., on 09.07.2023 and has filed the aforesaid application. He further states that, he has not received any summons from this court. He further states that, the order placing him exparte is not proper as he had not received any summons from the court.

4. The plaintiff has objected to the aforesaid application by stating that, the defendants had received the summons and had full knowledge about the pendency of the suit. That, the application deserves to be dismissed and the affidavit sworn to by the defendant is not true and hence prays for dismissing of the aforesaid application.

5. Heard arguments of both counsels.

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

1. Whether the defendant has made out sufficient cause to set



aside orders of exparte passed against him?

2. What order?

7. 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**

8. **Point No.1**:- It is the case of the defendant that suit summons was not served on him. As such, he could not attend the matter. Subsequently, through some persons he came to know that he has been placed exparte. He has good case on merits.

9. In this regard, I have perused the order sheet. It shows that, on 07.10.2015 the summons was duly served. Further this court took the said shara as sufficient service and placed the defendant exparte.

10. The procedure is the handmaid of justice. All the parties has the right to represent and defend their cases. The principles of natural justice always prevails over all the nuances. The defendant cannot be denied their right to



defend. The defendant has to right to participate in the proceeding. 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 defendant from representing his side.

11. Further, it is settled principle of law that a party not appearing earlier can appear at the subsequent stage. Further, the defendant always has the right to participate in the proceedings. Hon'ble High Court of Karnataka in Maula Sab V/s. Mohammed Qasim ILR 2003 KAR 1041 has stated as under;

***“Right of defendant to participate in - If defendant appears on date to which hearing of suit exparte is adjourned, he cannot be stopped from participating in proceeding on earlier hearings and did not show good cause for his non-appearance. It is only when he wants Court to go back on what has already been done, that he must make application assigning good cause for his previous non-appearance. Order permitting him to concluded proceedings, is valid and cannot be interfered with in revision.”***

In view of the law laid down by the Hon'ble Supreme Court of India and



considering the reasons furnished for the absence of the defendant, I am of the view that, there is no impediment to allow the application and to permit the defendant to represent his case. In this view of the matter, the contentions raised by the plaintiffs are of no avail to them.

12. It is to be considered that if the present application is not allowed the defendant cannot represent his case and hence the inconvenience which may be caused to him 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 defendant 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. Thus, 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.

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



**ORDER**

IA No.VI filed U/O.IX R.7 r/w. Sec.151 of CPC filed by the defendant is hereby allowed on cost of Rs.1,000/-.

The order of ex-parte passed against the defendant is set-aside.

(Dictated to the Typist directly on the computer, typed by her corrected by me and then pronounced in the open court on this the **5<sup>th</sup> day of December, 2023.**)

**(Sandeep S. Reddy)**  
**Addl. Senior Civil Judge & JMFC.,**  
**Magadi.**