

**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 October 2020

OS.No.336/2019

Plaintiffs : 1 Mohammed Riyaz Ulla,
S/o. late Alijan,
Aged about 60 years.

2 Mohammed Noorulla,
S/o. late Alijan,
Aged about 55 years.

3 Mohammed Chand Pasha,
S/o. late Alijan,
Aged about 48 years.

All are R/at Sunnakallu Beedi,
Ward No. 22, Magadi Town,
Ramanagara District.

{ Plaintiffs represented by **Sri. H.N.S.**, Advocate }

-- V/s --

Defendants : 1 Smt. Shamin @ Shamim Taj,
W/o. late Shafiulla,
Aged about 55 years.

2 Mohammed Muzamil,
S/o. late Shafiulla,
Aged about 28 years.

3 Smt. Naziya Bhanu,
D/o. late Shafiulla,
Aged about 27 years.

4 Smt. Ayesha Anjum,
D/o. late Shafi Ulla,
Aged about 25 years.

Defendant No.1 to 4 are R/at
New Masjid Mohalla,
B.K.Road, Magadi Town,
Ramanagara District.

5 Sri. J.P.Chandregowda,
S/o. Puttarangaiah,
Aged about 38 years,
R/at Juttanahalli Village,
Kempasagara Post, Kasaba Hobli,
Magadi Taluk, Ramanagara District.

{ Defendant No.1 represented by **Sri. R.S.**, Advocate }
{ Defendant No.5 represented by **Sri. J.A.D.N.**, Advocate }

ORDER ON IA NO.IV

The present suit is for declaration of title and permanent injunction. The plaintiffs have further sought to declare that the sale deed dated:22.08.2019 is not binding on them.

2. The present application has been filed by defendant no.5 seeking permission of this court to allow him to file the written statement. The defendant submits that due to non-availability of

documents he could not contact his counsel to prepare the written statement. He has good case on merits. In this regard defendant no.5 prays as above.

3. The plaintiffs filed objection to the application and denied the application averments. The plaintiffs contended that defendant no.5 is a real estate agent and his wife is a present member of Zilla Panchayath. The suit summons was served on defendant no.5 on 18.11.2019 and Sri.J.A.D.N. Advocate filed undertaking memo and subsequently the said advocate filed vakalath on 16.12.2019. Defendant no.5 did not file the written statement and hence his written statement was taken as not filed. The present application is liable to be rejected. The defendant has not produced any documents to show that the delay has occurred to obtain the documents. Nothing is forthcoming in the application as to in obtaining which documents the delay has occurred. There are no reasons made out by the defendant to allow the application. In this regard plaintiffs pray to reject the application.

4. Heard both the counsel.

5. Considering the contentions of both counsels, the following points arise for my consideration.

1. Whether defendant no.5 has made out a case for permitting him to file 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.5 that due to non-availability of documents he could not contact his counsel to prepare the written statement. In this regard, I have perused the order sheet, wherein it is clear that the written statement of defendant no.5 was taken as not filed on 10.02.2020 and the present application came to be filed on 10.03.2020. Considering the same, I am of the view that there is a delay in filing the written statement by defendant no.5.

8. Considering the application on hand and the objections, 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 and the objections 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 filing written statement.

9. On perusal of the application, it reflects that due to non-availability of documents the defendant could not meet his counsel to prepare the written statement. As such, defendant no.5 could not file the written statement in time. Having regard to the delay occurred in filing the written statement, I am satisfied with the reasons made out by defendant in not filing the written statement within the stipulated time period. The plaintiffs contend that the reasons for delay in filing the written statement is not true. No reasons have been made to allow the application. Nothing is forthcoming in the application as to in obtaining which documents the delay has occurred. 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, the contentions of the plaintiffs are of no avail to them.

10. It is to be considered that if the present application is not allowed defendant no.5 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 plaintiffs, if the application is allowed. Further, if the application is not allowed the injury which may be caused to 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. 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.

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

ORDER

IA No.IV filed U/sec.151 of CPC filed by defendant no.5 is hereby allowed on cost of Rs.100/-.

(Dictated to the Stenographer, typed by him corrected by me and then pronounced in the open court on this the **17th day of October, 2020.**)

(Hanumanth Satwik)

Addl. Senior Civil Judge & JMFC.,
Magadi.