

: ORDER ON I.A.No.IV

Defendants No.1 and 3 have filed I.A. No.IV under Sec.151 of CPC., seeking permission to file written statement by condoning the delay in the interest of justice.

2. The defendant No.1 has sworn to an affidavit in support of this I.A. and contended that defendant No.1 and 2 have filed written statement today and intends to contest the mater. They could not file the written statement in the earlier stage, as the documents pertaining to the Will executed by her husband in favour of 2nd defendant was misplaced in the revenue department where applications were pending for effecting khata. Defendant No.1 is a rustic woman and she was not able to give instructions to her counsel with in time. The suit properties are the valuable properties and if she is not given any opportunity to contest the matter then she will be put to much hardship and loss and if the I.A. is allowed, no much hardship and injury will be caused to the other side. Hence, prays to allow the application in the ends of justice.

3. Plaintiff has filed objection to this I.A and denied entire I.A averments as false. According to her matter is set down for further chief examination of DW.1 and

at this stage this application cannot be allowed. This court has given sufficient opportunity for the defendants to file written statement, but they have failed to do so and just to drag on the matter they have come up with this I.A at the fag end of the trial. Hence, prays to dismiss the I.A. with exemplary cost in the interest of justice.

4. Heard and perused the records.

5. The points that arise for my consideration are as follows;

1. Whether I.A.No.IV filed by the defendant No.1 and 3 under Sec.151 of CPC is deserves to be allowed?
2. What Order?

6. My findings to the above points are as follows;

POINT No.1 : In the Affirmative

POINT No.2 : As per final order
for the following;

:REASONS:

7. **POINT No.1:** The plaintiff has filed the suit for partition and separate possession seeking her legitimate share in the suit properties. Defendant No.4 has contested the matter by filing written statement. He has filed the consenting written

statement by admitting plaint averments as true and he has also sought his respective share in the suit properties. The written statement of defendant No.1 and 2 was taken as Nil in the month of February 2023. Exactly after 1 year he has filed this I.A. in the month of February 2024 seeking permission to file the written statement. This court has framed issues in the month of August 2023 and plaintiff has also led evidence in the month of December 2023 and closed his side. Now defendant No.4 has led evidence and matter is posted for her chief examination. It is true that this court has given sufficient opportunity for defendant No.1 and 3 to file written statement, but they have not made use of it. Considering that defendant is aged about 82 years and defendant No.3 is married daughter and residing in Bengaluru and this is a suit for partition where both of them have taken contention of registered Will dated 22.06.1994 said to have been executed by the husband of defendant No.1. I feel it just and proper to give an opportunity for them to put forth their defence and rebut plaintiff's case. The delay caused by the defendants have to be compensated by imposing heavy cost. Defendant No.1 and 3 have urged valid grounds to condone the delay in filing the written statement. Hence, I answer Point No.1 in the **Affirmative.**

8. **POINT No.2:** For the reasons stated above, I proceed to pass the following;

: ORDER :

I.A.No.IV filed by defendant No.1 and 3 under Sec.151 of CPC is hereby allowed on cost of Rs.1,000/-.

Written statement filed by defendant No.1 and 3 is taken on record.

For payment of cost and for additional Issues.

**Sd/-
Prl. Senior Civil Judge & JMFC.,
Madhugiri.**