

ORDERS ON I.A.NO.VI

At the stage of issuance of notice on main petition to respondents No.1(e)(v) and respondent No.1(e)(vii), the instant application is filed by the respondents No.1(e)(ii) to 1(e)(vii) under Order IX Rule 7 R/W. Section 151 of C.P.C. for setting aside order dated 19.01.2023, 02.02.2023 and 16.02.2023 and permitting them to contest the petition.

2. The petitioners have orally objected.

3. Heard on both side. Perused the entire materials.

4. Having heard and perusal of the records, the following points arise for the consideration of the Court:

Point No.1: Whether the respondents No.1(e)(ii) to 1(e)(vii) has made out good grounds to allow the instant application?

Point No.2: What order?

5. Answers of the Court to the aforesaid points are as under:

Point No.1: In the Affirmative.

Point No.2: As per the final order, for the following:

REASONS

6. **POINT NO.1:** The instant application is filed by the respondents No.1(e)(ii) to 1(e)(vii) to set aside

order of placing them *exparte* on 19.01.2023, 02.02.2023 and 16.02.2023 and to permit them to contest the petition.

7. In the affidavit filed in support of instant application, it is stated by respondent No.1(e)(vii) that, he is the grandson of late Shri. Kedari Javalkar and his mother was died and he was not aware of legal proceedings of this petition. It is further stated that, the petitioners are his relatives and he came to know about pendency of this petition when he received notices from the Court. After consulting with his sisters and brother, now the instant application is filed for himself and other applicants. It is further stated that, his mother is also having equal share in the suit properties as she is also one of the daughter of late Shri. Kedari Javalkar and as such, the applicants are the share holders in the petition schedule properties and it is necessary to set aside the order of placing them *exparte*. On the other hand, the petitioners have orally objected the instant application.

8. Matters of the year 2014. In view of death of respondent No.1(e) by name Smt. Bayavva Bhimarao Kumbarkoppa, this Court has issued notices to her LRs on application filed by the petitioners to bring them on record. In spite of the same, the LRs were not appeared. As such, Court was permitted the petitioners to bring the LRs of deceased respondent No.1(e) on

record. Accordingly, they are brought on record and notice on main petition issued to respondent No.1(e)(i) to 1(e)(vii). Thereafter also, they did not appear before the Court and they have been placed exparte. Now, instant application is filed to set aside the said orders. Though the applicants could have appeared at the earliest stage and though the instant application is filed at belated stage, but Court opines that, to provide an opportunity, it is just and necessary to allow the application by imposing costs which would meets the ends of justice. Hence, Point No.1 is answered in the **AFFIRMATIVE**.

9. POINT NO.2: In view of the aforesaid discussion Court proceeds to pass the following:

ORDER

I.A.No.VI filed by applicants/ respondents No.1(e)(ii) to 1(e)(vii) is hereby allowed on cost of Rs.500/- payable to the petitioners.

The orders dated 19.01.2023, 02.02.2023 and 16.02.2023 are hereby set aside and the applicants of this application are permitted to contest the petition.

Civil Judge, Haliyal.

ORDERS ON IA NO.VII AND IX

IA No.VII is filed by the respondents No.2(b) to 2(d), 3(a),(b), 3(d) (I) and 3(d) (ii) under Section 151 of CPC to permit them to file objections to main petition by setting aside previous order of taking their objections as “not filed”.

2. Similarly, IA No.IX is filed by the respondents No.1(a) to 1(h) under Section 151 of CPC to permit them to file objections to main petition by setting aside previous order of taking their objections as “not filed”.

3. The petitioners have filed separate objections to IA No.VII and IX.

4. Heard on both side. Perused the entire materials.

5. Having heard and perusal of the records, the following points arise for the consideration of the Court:

Point No.1: Whether the applicants to IA No.VII and IX have made out good grounds to allow the applications?

Point No.2: What order?

6. Answers of the Court to the aforesaid points are as under:

Point No.1: In the Affirmative.

Point No.2: As per the final order, for the following:

REASONS

7. **POINT NO.1:** The respondents No.2(b) to 2(d), 3(a),(b), 3(d) (I) and 3(d) (ii) and the respondents No.1(a)

to 1(h) have filed the present applications separately to permit them to file objections to the main petition. The sum and substance of contents of affidavit filed by respondent No.2(d) in support of IA No.VII is that, he has appeared in this case on 15-12-2022 and at that time, the matter was posted for issuance of notices to other respondents and on last date of hearing, notices to all respondents served and by considering the same, the Court has passed an order of taking objections to the main petition of respondents No.2(b) to 2(d), 3(a),(b), 3(d)(I) and 3(d) (ii) as “not filed”.

8. Similarly, the respondent No.1(e) in his affidavit filed in support of IA No.IX has stated that, he came to know about the pendency of this litigation only when he received notices from the Court after the death of her mother and himself and other applicants of this IA being the grandchildren of late Sri. Kedari Javalkar are having share in the suit schedule properties and as such, it is very much necessary to permit them to file objections to main petition.

9. On the other hand, the petitioners in their objections to IA No.VII have contended that, instant applications is filed at belated stage; as many as 12 dates were given to respondents No.2(b) to 2(d), 3(a),(b), 3(d)(I) and 3(d) (ii) to file objections to main petition; multi fold prayers cannot be sought in a single application; respondent No.2(b) (c) are not represented by the counsel who has filed the present application and as such, application is deserves to be rejected.

10. So far as IA No.IX is concerned, the petitioners through their counsels have submitted that, it may be allowed on heavy costs. Court has perused entire materials. There is no doubt that, instant applications are filed at belated stage. But at the same time, Court has to see that, sufficient opportunities to be given to the parties to prove their cases. Hence, Court opines that, by condoning delay in filing instant applications, it can permit the applicants to file objections to main petition. Otherwise, it would amount to denial of opportunity. At the same time, Court has to consider the hardship and inconvenience which would be caused to the 'no fault party'. With this, Court opines that, applications could be allowed by imposing necessary costs. Hence, Point No.1 is answered in the **AFFIRMATIVE**.

11. POINT NO.2: In view of aforesaid reasons and findings, Court proceeds to pass the following:

ORDER

IA No.VII filed by the respondents No.2(b) to 2(d), 3(a),(b), 3(d) (I) and 3(d)(ii) under Section 151 of CPC is hereby allowed on cost of Rs.1,000/- payable to the petitioners. Consequently, respondents No.2(b) to 2(d), 3(a),(b), 3(d)(I) and 3(d)(ii) are permitted to file objections to main petition subject to payment of cost.

IA No.IX filed by the respondents No.1(a) to 1(h) under Section 151 of CPC is hereby allowed on cost of Rs.1,000/-

payable to the petitioners. Consequently, respondents No.1(a) to 1(h) are permitted to file objections to main petition subject to payment of cost.

Civil Judge, Haliyal.

ORDERS ON IA NO.VIII

IA No.VIII is filed by the petitioners against the respondents under Order VI Rule 17 of CPC for amendment of petition i.e., to delete “Rule 12” and to add “Rule 18” in its place in the heading after the cause title of the petition.

2. The respondents No.2(b) to 2(d), 3(b), 3(d) (I) and 3(d) (ii) and the respondents No.1(a) to 1(h) have filed separate objections to IA No.VIII.

3. Heard on both side. Perused the entire materials.

4. Having heard and perusal of the records, the following points arise for the consideration of the Court:

Point No.1: Whether the applicants have made out good grounds to allow the application?

Point No.2: What order?

5. Answers of the Court to the aforesaid points are as under:

Point No.1: In the Affirmative.

Point No.2: As per the final order, for the following:

REASONS

6. POINT NO.1: The petitioners have filed the present application for amendment of heading after the cause title of the petition to the effect that, present petition is filed under Order XX Rule 18 and not under Order XX Rule 12 of CPC. It is stated in the affidavit filed in support of instant application that, instead of typing “Rule 18” it has been typed as “Rule12” in the heading after the cause title of the petition and the said mistake is a typographical error which could be rectified and no harm would be caused to the respondents by making necessary correction.

7. On the other hand, the respondents No.1(a) to 1(h) have contended in their objections that, present petition is filed in the year 2014 and instant application is filed for amendment in the year 2023 which is not permissible under law. It is also contended that, the Court Commissioner has submitted his report, petitioners have already led their evidence and at the stage final arguments, instant application is filed which is not tenable. It is further contended that, the petitioners have prosecuted the case till today under Order XX Rule 12 of CPC for the relief of possession and mesne profits and now they intend to change the provision of law under the guise of typographical error which cannot be permitted.

8. The respondents No.2(b) to 2(d), 3(b), 3(d) (I) and 3(d) (ii) have contended in their objections that, present petition is filed in the year 2014 and instant application is filed for amendment in the year 2023 which is not permissible under law. It is also contended that, the Court

Commissioner has submitted his report, petitioners have already led their evidence and as per proviso of Civil Procedure Code (Amendment Act), 2002, the instant application is not tenable. It is also contended that, the respondents No.2(b) to 2(d), 3(b), 3(d) (I) and 3(d) (ii) have already taken a contention in their objections to main petition that, the present petition under Order XX Rule 12 is not tenable as the original suit was filed for the relief of partition and separate possession and Order XX Rule 12 deals with recovery of possession and mesne profit. It is further contended that, principle of “quoting wrong provision of law is not fatal to the case” is not applicable to main petition and the petitioners have not assigned any cogent reasons as to how typographical error was occurred and if proposed amendment is allowed, nature of proceedings will be changed. With this, the respondents prayed to reject the application.

9. There is no dispute that, Order XX Rule 12 of CPC deals with decree for possession and mesne profits. OS No.97/1982 was filed for the relief of partition and separate possession. To draw final decree based on preliminary decree, the petitioners ought to have filed the present petition under Order XX Rule 18 of CPC. However, the heading after the cause title of the petition shows that, the present petition is filed under Order XX Rule 12 of CPC instead of Order XX Rule 18 of CPC.

10. It is settled law that, pleadings to be considered in its totality. In the body of the petition, the petitioners have not sought the relief of possession and mesne profits. They

have sought to draw final decree by effecting the partition of the petition schedule properties by metes and bounds. Merely because the petitioners have mentioned “Rule 12” in the heading after the cause title of the petition does not mean that, they have filed the present petition for recovery of possession and mesne profits and they have all along conducted the case for the said relief. Hence, the wrong provision of law which could be seen in the heading after cause title of the petition is nothing but a typographical error which could be rectified.

11. Though it is true that, the instant application is filed at the fag end of the petition but it is also settled law that, application seeking the amendment to be considered liberally to meet the ends of justice. It is the duty of the Court to see as to what harm or prejudice will be caused to the other side if proposed amendment is permitted. In the case on hand, though this petition is pending since 2014, very recently, the respondents have filed objections to main petition. From the beginning itself, the respondents have not contested the matter by stating that, the petition is not tenable under Order XX Rule 12 of CPC. Moreover, at this stage, if the proposed amendment is allowed, no prejudice will be caused to the other side. Hence, the instant application is deserves to be allowed. Having regard to the same, Point No.1 is answered in the **AFFIRMATIVE**.

12. POINT NO.2: In view of aforesaid reasons and findings, Court proceeds to pass the following:

ORDER

IA No.VIII filed by the petitioners under Order VI Rule 17 of CPC is hereby allowed on cost of Rs.1,000/- payable to the respondents.

Consequently, the petitioners are permitted to carry out necessary amendment to the petition and they shall furnish amended petition on next date of hearing.

Civil Judge, Haliyal.