

Case called out.

Heard, Sri.S.U.A., learned counsel for Defendant No.9 and Sri. M.N.S. learned counsel for plaintiff on IA No.I.

The instant IA No.I is filed by defendant No.9 U/s. 151 of CPC seeking to set aside the order dated 28-02-2020 wherein his written statement was taken as Nil and sought permission to file his written statement and permit him to participate in the proceeding. In the affidavit annexed to the application, the defendant No.9 has stated that on 28-02-2020 he was at Bangalore and due to Covid-19, he could not able to come over to Kumta and hence in time he could not contact his counsel. It is also stated that previously in O.S.No.83/2016 filed by the plaintiffs in this case he has filed the written statement and now in view of changed circumstance, this suit has been filed and he has filed the similar written statement as filed in O.S.No.83/2016 and hence the application may be allowed.

On the other hand in the objections the plaintiffs has contended that the defendant No.9 has not assigned sufficient reasons for delay in the filing the written statement. In O.S. No.83/2016, when the matter is set down

for cross examination of P.W.1 before Hon'ble Civil Court, Kumta, the defendant No.9 has raised the point of pecuniary jurisdiction and hence as per the order passed by the trial Court, the plaintiff has presented the plaint before this court on the point of jurisdiction. It is also stated that after registration of the present suit, when the suit summons is issued to defendant No.9, he has tried to avoid service of the summons and at one occasion, when defendant No.9 was present in the court premises, the plaintiff and her counsel with the assistance of process server tried to serve the summons on him, he has stated that he is not the defendant No.9 in the present case. It is also contended that the defendant No.9 has not assigned sufficient reason and the reasons stated in the affidavit are false and hence sought for rejection of the application with cost.

Heard, both side.

On perusal of the record it reveals that the instant suit is filed by the plaintiff seeking partition and separate possession of her share in the suit schedule properties. Admittedly the defendant No.9 has not filed written statement in time and hence on 28-02-2020 this court has constrained to take written statement of

Defendant No.9 as not filed. Now through this application, the defendant No.9 has sought permission to file written statement. The reasons assigned in the affidavit annexed to IA No.1 is acceptable one. Further the court is of the opinion that an opportunities has to be given to defendant No.9 to put forward his defense and the principles of natural justice also contemplate that an equal opportunity has to be given to the parties to the proceedings to substantiate their contention. Hence, with these observations, the court proceed to pass following

ORDER

IA No.1 filed by the defendant No.9 U/s. 151 of CPC is hereby allowed.

In the result the order of taking written statement of defendant NO.9 as not filed on 28-02-2020 is hereby set aside and the written statement filed by defendant No.9 is taken on record.

No order as to cost.

Senior Civil Judge, Kumta

For compliance of section 89 of CPC.

Call on 30-11-2020

Sd/-13-11-2020

Senior Civil Judge, Kumta