

KAUP020005012018



IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE AND
CJM., UDUPI

Present: Sri. Vignesh Kumar,
B.A.(Law), LL.M.

Prl. Senior Civil Judge & CJM.,Udupi.

Dated : This the 27th day of November, 2023

O.S.No.31/2014

Between:

Rathi Shetty and Ors. : **Plaintiffs**

(Rep.by Sri.G.A.K.S., Advocate)

-Versus-

Ramesh Shetty & Ors. : **Defendants**

(Rep.by Sri.S.G.A., Advocate for D1 to D3

D5,15 to20, 14(a) to (i) – Exparte

Rep.by Sri.U.S.K., Advocate for D6)

Rep.by Sri.A.S.H., Advocate for D7 to D12

Rep.by Sri.H.S., Advocate for D13

D4, 14 – Dead

D4 – Lrs on record)

I.A. No.XXVII**Between:**

Ramesh Shetty & Ors : **Petitioners/D. 1 to 3**

-Versus-

Rathi Shedthi & Ors. : **Opponents/ Plaintiffs**

i.	Provision under which the application is filed	Under Order VIII, Rule 9 R/w Sections 148 and 151 of C.P.C.
ii.	Relief sought for	To receiving additional written statement
iii.	The date on which the application is filed	26.10.2023
iv.	Number of the application	I.A.No.XXVII
v.	The date on which the objections are filed by different opponents	08.11.2023
vi.	The date on which the orders were passed on the said application	27.11.2023
vii	Stage of the case, when IA is filed	Cross of DW2

ORDER ON I.A.NO.XXVII

This is an application filed under Order VIII, Rule 9 R/w sections 148 and 151 of CPC by defendants no.1 to 3 praying to receive their additional written statement.

2. In the affidavit annexed to the IA, the defendant no.3 has averred that when her advocate was preparing for cross-examination of D.W.2 by going through the chief examination, he noticed that defendant no.7 has propounded a Will alleged to be executed by Menku Shetty. The defendants no.1 to 3 were not aware regarding the said Will and as such while filing written statement the said Will was not denied. At present the defendants no.1 to 3 seeks leave of this Court to file additional written statement denying the said Will executed infavour of defendants. Hence, the present IA.

3. The learned counsel appearing for defendant no.7 has filed his counter statement to the said IA by contending that the application is barred by inordinate delay and already one of the attesting witnesss to the said Will infavour of defendant no.7 i.e., DW1 has been cross-examined by the defendants no.1 to 3. The trial in the above suit is already commenced and at a fag end in the present IA is filed without any justification. Especially, DW1 cross-examined at length and it cannot be said that the defendants no.1 to 3 were not at all aware regarding the Will infavour of defendant no.7. The allegations made in the additional written statement of defendant no.3 is denied and it is prayed to dismiss the IA with cost.

4. Heard learned counsel for defendants no.1 to 3 and learned counsel for defendants no.7 and 8.

5. The following point would arise for my consideration;

“Whether it is necessary to permit defendants no.1 to 3 to file their additional written statement.?”

6. My findings to the above point is in the **affirmative** for the following:

REASON

7. The records would go to show that it is a suit for partition filed by the plaintiffs no.1 to 4. The defendant no.7 had set up a Will in his favour by filing detailed written statement on 17.09.2014. The defendants no.1 to 3 filed their written statement on 11.10.2019. Admittedly, at the time of filing of the written statement of defendants no.1 to 3, the defendant no.7 had already filed his written statement by setting up Will dated 08.05.2012. Already during the course of trial, one of the attesting witness to the said Will is examined as DW1. Learned counsel for defendants no.1 to 3 had infact cross-examined DW1 at length by denying the execution and attestation of the said Will.

8. The burden of proof in respect of the Will is on a higher pedestal. It is for the defendant no.7 to discharge his burden by proving the execution and attestation of the Will. In the present case , on behalf of plaintiffs PW1 was examined. However, he did not tender himself for cross-examination and as such further cross-

examination of P.W.1 was taken as nil on 24.03.2023 and the matter was posted for arguments. At that stage of the proceeding the defendant no.7 appeared on the scene and he has sought permission to lead his side of evidence. Perhaps, due to the silence on the part of the plaintiff, the present suit has ended up like an interpleader suit, wherein the contest is between the co-defendants. The defendants no.1 to 3 claim right over the suit schedule property on the ground that the occupancy right was granted by Land Tribunal individually in favour of Gopala Shetty and his family consisting of wife and children. Whereas the defendant no.7 has taken up the contention that the said Gopala Shetty had bequeathed the suit schedule property by way of Will dated 08.05.2012 in favour of plaintiff no.1, defendants no.4 and defendant no.7. Nodoubt there is an inordinate delay in filling the written statement but if the opportunity is denied to the defendants they will suffer irreparable hardship. Especially when the defendants no.1 to 3 are taking up a specific contention that the suit schedule properties are the exclusive occupancy granted lands of their predecessor Gopala Shetty, additional written statement does not change the nature of their defense. Admittedly there is counter-claim sought under additional written statement . There is no bar or embargo of law in receiving additional written statement belatedly. The inconvenience if any caused to the defendants no.7 and 8 can be compensated by imposition of cost. With these

observations, the above **point is answered in the affirmative** and this Court deems fit to pass the following:

ORDER

I.A.No.XXVII filed under Order VIII, Rule 9
R/w Sections 148 and 151 of CPC is hereby
allowed with cost of Rs.1,000/- payable to
defendant no.7 and 8 only.

(Dictated to thee stenographer, transcribed by
her in the computer, corrected by me and then
pronounced in open court on this the 27th day of
November, 2023)

(Vignesh Kumar)
Prl. Sr. Civil Judge and CJM.,
Udupi.