

1-7-2022

ORDER ON I.A.NO.II

This application is filed by respondent seeking permission to file his objection to main petition by condoning the delay.

The learned counsel for petitioners filed detailed objection.

Heard the learned respective counsels and perused the materials placed on record.

This is the petition filed by the petitioners to pass final decree for partition after dividing the suit properties by metes and bounds in accordance with preliminary decree passed in O.S.No.18/2009. Notice of this petition was served personally to the

respondent on 14-10-2020. Learned Sri. H.G.S., Advocate filed vakalath for respondent . Even though this court has granted sufficient time to the respondent to file his objection from 18-11-2020 till 01-07-2021 running into more than 7 ½ months, the respondent did not avail the opportunity to file his objection statement. Hence this court vide order dated 01-07-2021 issued court notice to respondent and called upon him to file his objection statement if any on main petition and adjourned the case to 14-07-2021. Even though court notice was personally served to the respondent, he did not mark his presence before the court either on 14-07-2021 or on 16-08-2021 (i.e.) the next adjourned date. Even counsel appearing for respondent was not present before the court and there was no representation from the side of respondent. Hence this court vide order dated 16-08-2021 taken the objection of respondent on main petition as not filed and after hearing the learned counsel for petitioner on commission application passed order for appointment of court commissioner.

Accordingly commission warrant was issued and posted the case to 22-09-2021 awaiting commission report. It is on 10-11-2021 Sri.P.S.K., Advocate filed vakalath for respondent after obtaining No Objection from previous counsel. Even though respondent changed his advocate from learned Sri. H.G.S. to learned Sri. P.S.K., Advocate, but even after engaging present counsel, the respondent not though it fit to file his objection statement by seeking leave of the court. It is after nearly 5 adjourned dates from the date of filing of vakalath by learned Sri. P.S.K., Advocate i.e., on 02-03-2022, I.A.No.II (i.e.) present application is filed seeking permission to file the objection statement on main petition. In the affidavit annexed to I.A.No.II, the respondent bent upon blaming his previous counsel of the alleged act of previous counsels giving false assurance that he will effectively conduct the case on behalf of respondent. It is submitted by the respondent that he has believed the words of his previous counsel that his counsel will take care of his case and will conduct the case properly, but later

he came to know that his previous counsel did not represent him effectively before the court and did not file his objection to the main petition and later he engaged present counsel who advised him to file objection to main petition. It is submitted by respondent that his non-appearance before the court was due to the reasons stated above, hence submitted to allow the application. The learned counsel for the respondent at this juncture has referred ruling reported in 2010 (5) KCCR SN 290 wherein it was observed that petitioner cannot be punished for default of the counsel.

In 2009 (3) KCCR SN 118 (SC) . In the said case appellant had engaged the service of two learned counsels, unfortunately for him, one has elevated to the bench and other was suffering from physical ailment and there was no proper representation, hence appeal was allowed. The Hon'ble Supreme Court allowed the restoration application. If the ordersheet maintained in the present petition, as reproduced herein above, is recollected, apart from the previous counsel of respondent not taking

proper initiation to conduct the case of respondent, even the respondent was also not diligent in conducting the case. When this court had issued court notice to the respondent and directed him to take proper steps to file his objection statement, or else his objection statement will be taken as not filed, if really respondent is vigilant, on service of court notice, he could have appeared before the court by keeping his counsel present before the court and he could have filed his objection statement at least at that point of time. But in spite of service of court notice neither respondent was present nor his counsel and there was no representation from his side. It is relevant to note here that even after respondent engaged present counsel, he did not take step to file his objection statement in time by seeking leave of the court. As observed supra, it is after 5 adjourned dates from the date of respondent engaged present counsel, he filed the present application. Hence it is not proper on the part of the respondent to blame on the advocate by suppressing his fault. Hence

considering the inordinate delay caused by the respondent, by giving opportunity to the respondent to have his objection on main petition, this court proceed to pass the following:-

ORDER

I.A. No.II filed by the respondent under Section 151 of C.P.C., is allowed on cost of Rs.500/-.

The respondent is permitted to file his objection statement to main petition.

(Roopashri)
Senior Civil Judge & ACJM Karkala.