

IN THE COURT OF CIVIL JUDGE & JMFC, HARAPANAHALLI

Present: SMT. SHOBHA B.G., M.A., LL.B.,
Civil Judge & JMFC, Harapanahalli.

Dated : This the day of 13th March, 2018.

O.S. NO.262/2012

Plaintiff/s : Sudugadappara Halappa
(Rept., by Sri P.J.G., Advocate)

-V/s-

Defendant/s : Anajigere Kariyappa and others
(Rept., by Sri. T.V.S. & M.S.B., Advocate)

I.A. No. VIII

Applicant/s : Challeri Siddappa

V/s

Respondent/s : Sudugadappara Halappa

ORDERS ON IA.NO.VIII U/S. 151 OF CPC

IA.No.VIII filed by the defendant No.3 U/s 151 of CPC seeking permission to file written statement by condoning delay in filing of written statement.

2. The application is accompanied with an affidavit sworn by the defendant No.3 wherein he stated that due to his ill-health he

could not consult his counsel. The reason for non filing of written statement is not intentional one. But it is a bonafide reason. If the application is not allowed he will be put to great hardship and injustice. On the other hand no prejudice will be caused to the plaintiff. Hence, he prayed to allow the application.

3. The said application has been resisted by the plaintiff by filing his objection wherein he contended that the application is not maintainable under law. The averments made in the affidavit in support of the petitioner that he was not feeling well and delay caused for obtaining the certified copy of the documents from Tahasildar office and Sub-register office is totally created and concocted story. The defendant No.3 has not produced any document in respect of his ill health and when he has obtained the certified copy of the documents, for which the application is liable to be dismissed. Further he contended that the defendant No.3 has not stated in his affidavit or petition how much days, months and year delay in filing the written statement on his behalf. With malafide intention to protract the litigation by one or the other reasons with an intention to harassing the old aged plaintiff he filed this application. Hence prayed to reject the application.

4. Heard the arguments. Perused the rival contention of the parties.

5. On the basis of the above facts, the following points that arise for my determination are;

1. Whether the defendant No.3 has made out sufficient ground to allow the application ?

2. What order ?

6. My answer to the above points is;

Point No.1 : In the Affirmative;

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

REASONS

7. Point No.1:- On perusal of contention urged by both parties it appears that the plaintiff has filed this suit for the relief of Declaration of title and consequential relief of permanent injunction. According to defendant No.3, due to his ill-health he could not consult his counsel. The reason for non filing of written statement is not intentional one. But it is a bonafide reason. According to the plaintiff, there is no justifiable reason to allow the application. He has sworn false affidavit. However, on perusal of records it appears

that the plaintiff filed this suit in the year 2012. The defendant filed this application on 03-01-2019.

8. The contention of both parties makes clear that there is a suit for declaration of title and permanent injunction. As such the defendant No.3 has every right to contest his case. When the defendant No.3 has come forward to contest the case by filing his written statement, an opportunity has to be given to him to meet the ends of justice. It is true that already opportunity has been given to him and he has filed this application after lapse of more than 6 years. But mere delay is not a ground to reject the application. The delay may be compensated by imposing cost. Moreover the trial is not yet commenced. Hence, I am of the opinion that it is necessary to allow the application in the interest justice and equity. If the application is allowed, no hardship will be caused to the plaintiff, rather than it will be helpful to adjudicate the case effectively. Accordingly point No.1 is answered in the ***affirmative***:

9. Point No.2:- For the above discussion, I proceed to pass the following;

ORDER

IA.No.VIII filed by the defendant No.3 U/s.151 of CPC is hereby allowed on payment of costs of Rs.3,000/-.

Defendant No.3 is permitted to file his written statement.

*(Dictated to the stenographer directly on computer, revised, corrected and then pronounced by me in the open Court on this the **13th day of March, 2019**)*

(B.G.SHOBHA)
Civil Judge & JMFC.,
Harapanahalli.

(Order pronounced in the open court
vide separate)

ORDER

**IA.No.VIII filed by the
defendant No.3 U/s.151 of CPC is
hereby allowed on payment of costs
of Rs.3,000/-.**

**Defendant No.3 is permitted to
file his written statement.**

**IA. No.IX filed by the defendant
No.3 U/O.8 Rule 1(A) R/w Sec.151 of
CPC is hereby allowed on payment of
cost of Rs.200/-.**

**Defendant No.3 is permitted to
file list of documents.**

Civil Judge & JMFC.,
Harapanahalli.

For payment of cost and written
statement of defendant by:
23.08.2018.

Civil Judge & JMFC.,
Harapanahalli.