

Order below Exh 144 in R.C.S No.215/2004

1. Perused application and say filed to it. Heard learned counsel appearing for the parties. Perused record and proceeding.

2. Present application is filed by the defendant No.10 and 11 for setting aside No W.S.Order passed against them. It is their contention that they have not intentionally caused delay to file their Written Statement. As the relevant essential documents required for its preparation has not been received within time from revenue authority, therefore, delay has been caused. Suit is for immovable property. Therefore, it is necessary in the interest of justice to hear the side of defendants. Thus, they prayed for setting aside No W.S. Order passed against them and for accepting their Written Statement.

3. Defendants resisted this application by contending it false, frivolous and illegal. It is their contention that the reason given in this application is not correct. Application is of imaginary nature. No W. S. order has been passed on 8/02/2013. Defendants only with intention to protract the hearing of this suit, filed this application at belated stage. Thus, they prayed for rejection of this application in the alternative prayed for cost of Rs.3,000/-.

4. On perusal of record it appears that as defendant No.10 to 12 failed to file their Written Statement though availed sufficient time, No W.S. Order came to be passed against them on 8/02/2013. Present application is filed on 9/01/2013, almost after expiry of 11 months from the date of passing of aforesaid order. It is pertinent to note

that present suit is filed for partition, separate possession of their share by metes and bounds and for perpetual injunction. Defendant No.10 and 11 subsequently impleaded in this suit, being descendant of original ancestor Ganpatsing. No doubt there is delay caused on the part of defendants to file their Written Statement. However, considering the nature of suit and the reason given in this application that due to non availability of document within stipulated period it has not become possible for them to file Written Statement within time. Therefore, present application in the interest of justice deserves to be allowed. At the same time it is necessary to saddle cost on defendants for the delay caused on their part. Hence, following order.

ORDER

- 1) Application Exh.144 is hereby allowed subject to cost of Rs.2,000/-.
- 2) No W. S. order passed against defendant No.10 and 11 is hereby set aside.

sd/xxx

Date : 26/04/2014

(R. V. Jagtap)
Civil Judge, Senior Division
Shrigonda.