

IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION, KAMPTEE.

R.C.S.No.171/2015

Laxmi ..Vs.. Rajkumar

ORDER BELOW EXH.85

(Passed on this 4th day of November-2019)

- 1) This is an application made by legal heirs of defendant No.1 and thereby praying for setting aside no written statement order and to adopt reply to temporary injunction application filed by deceased defendant No. 1 as their written statement.
- 2) Perused the application and say thereon given by the plaintiff.
- 3) The applicants submit that during the trial, defendant No.1 died and therefore, they have been brought on record at the instance of the plaintiff. The present suit came to be transferred from Civil Court Parshivni to this court. The defendant No.1 had filed reply to temporary injunction application on record. They would submit that their advocate due to inadvertence could not file written statement within statutory period of 90 days from the date of service of summons. Consequently, no written statement order came to be passed against them Hence, they prayed that the application be allowed in the interest of justice.
- 4) Per contra, the plaintiff stoutly resisted the present application on the ground that the same is nothing but a deliberate attempt to protract the case in hand. According to him, there is a huge delay in filing the written statement, which cannot be condoned. The grounds mentioned in the application do not warrant the setting aside no written statement order. Hence, he prays for rejection of the

application.

5) I have carefully gone through the record of the case. It is a matter of record that this is a suit for partition and separate possession and permanent injunction. The civil rights of the parties are entailed in the instant suit. The reason mentioned in the application for non-supplying of written statement within the stipulated time can be said to be a mistake of the advocate of the applicants, for which, they cannot be put to sufferance. If the permission is granted to applicants to adopt reply to temporary injunction application as their written statement, no prejudice would be caused to the plaintiff. Nay, this recourse would facilitate the court to adjudicate the case on merit. Having regard to the foregoing facts and circumstances, the following order would meet the ends of justice.

ORDER

The application stands allowed subject to cost of Rs. 1000/- to the plaintiff.

Place : Kamptee.
Date :04.11.2019

(D.R.Bhola)
Civil Judge (Jr.Dn.),
Kamptee.

CERTIFICATE

I affirm that the contents of this P.D.F. file of order are same word to word as per original order.

Name of Stenographer : Sau. V.S. Barde(Lr.Gr.)