

Reg.Civil Suit No. 63/2013
Radhabai Vs. Suvarna

Order below Exh. 58.

Present application is filed by defendant No. 3 herself and power of attorney of defendant No. 2 and 4 for accepting W.S. by setting aside exparte order. Plaintiff resisted the application on the ground of delay.

2. It has been contended by the defendant No. 3 that, defendant No. 1 is manager of her family. Defendant No. 1 has filed her W.S. but misunderstandingly they are not appeared in the proceeding. Defendant No. 1, 2 and 4 have given power of attorney to defendant No. 3. The dispute is in respect of immovable property and their inherent rights are involved. If the opportunity of hearing is not given to them they will suffer irreplaceable loss. Hence, she prayed for setting aside exparte order and accepting his W.S. On the other hand plaintiff objected the application is false. No cogent reasons are assigned. Defendants have already filed various applications before the present application. Hence, he prayed for rejection of application.

3. Suit summons is served on defendant No. 2, 3 and 4 on 06/08/2015 and 28/01/2016 respectively and suit is proceeded exparte against defendant No. 2 to 4. This application is filed on 19/04/2018. Defendant no. 2 to 4 are going to file W.S. It is pertinent to note that there is delay of 2 years 8 months to file W.S. The suit is for partition. However, considering the principle of natural justice the opportunity of hearing needs to be given to defendant No. 2 to 4. In order to decide the rights of the parties conclusively written statement of defendant No. 2 to 4 needs to be accepted. It would be apposite to decide the matter on merit.

Delay can be compensated by awarding cost. Hence, I proceed to pass the following order.

ORDER

1. The application is allowed.
2. Ex-parte order passed against defendant No.2 to 4 is set aside and W.S. is accepted subject to Cost of Rs. 500/- payable to plaintiff.

Date : 18/06/2018.

(Salim A. Jamadar)
Civil Judge, Junior Division,
Kankawali.