

ORDER ON EXH. 64 IN RCS.No. 79/2013
(Girjabai Malgonda Vs. Nilkant Malgonda)

With instant application defendant No.4 prays to set-aside ex-parte order passed against her and permission to file written statement to contest the claim.

2. According to defendant No.4, the plaintiff No.2 had met several times to her and told that, she was not obstructed the suit property 1B and 1C. Considering the relationship between them, she not represented herself in the present suit. Further she averred that, in September 2020 the plaintiff and other defendants obstructed suit property 1B and 1C. The plaintiff got knowledge through the newspaper about the defendant No.4 has purchased the suit property from the defendant No.5, therefore, it would be necessary to represent herself in the present suit. Further, the subject matter of suit is landed property, therefore, written statement is necessary to decide the suit on merit. If written statement is accepted, then no irreparable loss caused to the plaintiff. Therefore, an ex-parte order to proceed against her, needs to be set-aside. She has filed an affidavit in support of the application.

3. The plaintiff has opposed application contending that, the averments in the application are false and illegal. There were no meeting between the plaintiff and defendant No.4. The defendant No.4 has knowledge about the pendency of the suit. The plaintiff is widow and living destitute life. There is no reasonable cause to set-aside ex-parte order against the defendant No.4. The suit is pending since 2013. The defendant No.4 not participated in the proceeding with intent to prolong the matter and plaintiff will not get her share in the suit property. The evidence of plaintiff is closed. Further she stated that, the application be allowed subject to imposing cost of Rs. 1,00,000/-.

4. Heard learned advocates of both side. Perused record. The suit is for partition and separate possession of the suit property. The ex-parte order is passed against the defendant No.4 on 09.01.2014. Thereafter, evidence of plaintiff is completed and matter is kept for evidence of defendants. Thereafter

the present application is moved. Record makes it clear that the defendant No.4 was having proper knowledge and information about the suit. From record it makes clear that the defendant No.4 is completely negligent in respect of the proceeding. She intentionally avoided to appear and proceed with the cause.

5. Reasons putforth by the defendant No.4 for setting aside an order of ex-parte are evasive. Because, she has not mentioned in application in respect of the chronology of meeting arrived between the plaintiff and her. It also appear from the application that, she purchased portion of suit property from the defendant No.5 during the pendency of the suit. But, she has not taken pain to appear before the Court inspite knowledge of the suit.

6. Considering the nature of the suit, it will just and proper to give an opportunity to the defendant No.4 in the interest of justice. Definitely the plaintiff will suffer due to non filing of written statement or appears within the time. But she can be compensated in the terms of costs. Therefore, considering all above facts and circumstances, I pass following order :-

ORDER

- 1) The application is allowed.
- 2) The ex-parte order passed against the defendant No.4 is set-aside subject to costs of Rs.5,000/- (Five Thousand only) to be paid to the plaintiff on or before next date.
- 3) The defendant No. 4 is permitted to file W.S. on record.
- 4) Costs is condition precedent to accepts the W.S.

Date:-18/02/2021.

(S.N.Gavali)
Jt. Civil Judge Junior Division, Akkalkot.

Certificate

I affirm that, the contents of this PDF file Order/Judgment are same word to word, as per original Order/Judgment.

Name of Stenographer	:-	D.S.Landage (L.G.)
Court	:-	J.M.F.C.& Jt. Civil Court,J.D.,Akkalkot.
Date	:-	18/02/2021
Judgment/Order signed by the Presiding Officer	:-	18/02/2021
Judgment/Order uploaded on	:-	18/02/2021