

O.S. 25236/2010

Orders on I.A. u/s 151 CPC filed by the defendant No.4.

Heard.

The defendant No.4 sought permission to file written statement. In the affidavit he has stated that he has taken much pain and risk to secure the documents from the office of defendant No.11-The BEML Employees House Building Co-Operative Ltd, Bengaluru as well as land acquisition documents with respect to B schedule property. He also stated that he has received certain documents pertaining to payments of compensation to the plaintiffs with respect to the B schedule property and he has received the same only 15 days back.

The defendant No.4 contended that he has got good grounds to succeed the case and the claim of the plaintiff is

frivolous and vexatious. Accordingly, he sought permission to file written statement.

In support of his contention he had relied on the findings

Hon'ble Supreme Court in Deshraj Vs Balakishan (dead) through proposed Lrs. Ms Rohini reported in (2020)2 SEC 708.

A.Civil Procedure Code,1908-Or, 8 R 1-Power to condone delay in filing written statements beyond the prescribed period of 90 days qua non-commercial suits- continuance of – Amendment to Or. 8 R 1 CPC by the Commercial Courts Act, 2015 i.e. providing for mandatory nature of the timeline prescribed for filing of written statement and lack of discretion with courts to condone any delay – Inapplicability of, to non-commercial suits

- Held post coming into force of the Commercial Courts Act, there are two regimes of civil procedure: whereas commercial disputes [as defined under S.2(c) of the Commercial Courts Act] are governed by CPC as amended by S.16 of the said Act, all other non-commercial disputes fall within the ambit of the unamended (or original) provisions of CPC – Further, as regards the timeline for filing of written statement in a non-commercial dispute, held, the unamended Or. 8 R.1 CPC continues to be directory and does not do away with the inherent discretion of courts to condone certain delays.

Smt. Gowramma vs Nanjamma and others DD on 17-08-2001 by Hon'ble High Court of Karnataka in RFA 279/1998.

Civil-partition-code of Civil Procedure, 1908 – in suit for partition each defendant is entitled to seek partition and separate possession of his share by paying prescribed court fee for such purpose – when plaintiff seeks partition he is seeking partition not only against defendants but also against his co-plaintiff – each party to suit for partition whether plaintiff or defendant is in position of plaintiff with reference to all other parties to suit – when defendant seeks partition and separate possession of his share defendant's claim is neither set off nor counter claim against plaintiff in traditional sense.

In this case the plaintiff filed a suit against the defendant No.1 to 11 on 08-02-2010. On filing of the suit summons has been issued to the defendants and defendant No.4 appeared through his advocate on 22-06-2010. But, inspite of sufficient opportunity the defendant No.4 not filed written statement. Subsequently the defendant No.12 to 62 impleaded and they also filed their written statement. On framing of the issues, evidence commenced. In the meanwhile some of the parties died and Lrs brought on record.

According to the defendant No.4 he could not get the documents in time, hence he could not file written statement. He has appeared through his advocate on 22-06-2010 and application for seeking permission to file written statement filed on 13-09-2021. He almost taken 11 years.

No doubt the amendment to order 8 R 1 CPC is not mandatory, but it is directory in nature. But, it does not mean that the party can take many years to file a written statement. The defendant No.4 not made out any reasonable grounds to condone the delay of 11 years to file written statement.

The plaintiff and defendant No.1 to 10 claiming that they are the legal heirs of Chikkanagappa and they constitute joint family. So, they could have produce the relevant documents to substantiate their claim. Other defendants are the independent persons who are the purchasers of the property.

The defendant No.4 cannot take the benefit of the finding of the Hon'ble Apex Court and Hon'ble High Court of Karnataka as referred above for the reason that the matter in dispute is all together different from the present suit.

The affidavit annexed to the application reflects that just to drag the proceedings the 4th defendant filed the above application. The defendant No.4 not made out any reasonable grounds to condone the inordinate delay of 11 years. There is no merits in the application. Accordingly, I proceed to pass the following

ORDER

I.A. u/s 151 CPC filed by the defendant
No.4 is dismissed.

57th ACC & SJ
Mayo Hall Unit, B'lore.
Dtd. 13-01-2022.

Orders on I.A. u/o 14 R 3 and 5 r/w sec. 151 CPC filed by
defendant No.44.

Heard.

The defendant No.4 prays to frame the additional issues
as

- i) Whether the suit is bad for mis-joinder of unnecessary parties?

- ii) Whether the suit is maintainable without challenging the Sale Deeds already executed in favour of various purchasers with respect to sites formed in the A schedule property?
- iii) Whether the plaintiffs proves the cause of action?
- iv) Whether the valuation of the suit and court fee paid on the plaint is sufficient?

The plaintiff filed a suit for partition. Though the plaintiff impleaded the purchasers of the sites as defendants they have not challenged the Sale Deed executed in favour of the purchasers. According to the defendants plaintiff No.2, 3, 6 to 8 sold the site No.95 in favour of Mallaradhya under registered Sale Deed dtd. 18-06-2001. Similarly plaintiff No.2 to 8 sold site No. 96 etc.

The plaintiffs claims that they are in joint possession of the suit schedule property along with the defendant No.1 to 10. But, the purchasers are impleaded in the suit by denying the joint possession of the plaintiffs and defendant No.1 to 10 with respect to the schedule property. In this regard no issues has been framed. So, I am of the opinion that it is necessary to frame the following additional issues.

- i) Whether the defendant proves that the suit of the plaintiffs is not maintainable in view of the sale of the sites formed in item No.1 of the A schedule property?
- ii) Whether the court fee paid by the plaintiffs on the suit is sufficient?

With the above discussions the I.A. u/o 14 R 3 and 5 r/w sec. 151 CPC filed by defendant No.44 is partly allowed.

Additional issues.

- i) Whether the defendant proves that the suit of the plaintiffs is not maintainable in view of the sale of the sites formed in item No.1 of the A schedule property?
- ii) Whether the court fee paid by the plaintiffs on the suit is sufficient?

57th ACC & SJ
Mayo Hall Unit, B'lore.
Dtd. 13-01-2022.

Call on 15-02-2022.

57th ACC & SJ
Mayo Hall Unit, B'lore.
Dtd. 13-01-2022.