

KABG040004282016



23.12.2021

O.S.NO.159/2016

Through oversight the objection from defendant No.1 has not called for. Hence, for objection call again.

Called out, no representation by defendant No.1, hence objection to I.A.No.9 by defendant No.1 taken as not filed.

For hearing on I.A.No.9, heard on I.a.No.9. For orders on I.A.No.8 and 9, call again.

**C/c. IV Addl. Civil Judge & J.M.F.C.,
Belagavi.**

Called out again.

The counsel for plaintiff has filed I.A.No.9 U/O. VII Rule-14 R/w. Sec.151 of the C.P.C. along with four original documents. The defendants have not filed objections to I.A.No. 9.

Heard the counsel for plaintiff. Perused the materials available on record. Satisfied with the reasons assigned. The documents are original documents, hence in the interest of justice, I.A.No.9 is hereby 'Allowed' as prayed for.

For order on I.A.No.8.

**C/c. IV Addl. Civil Judge & J.M.F.C.,
Belagavi.**

ORDER ON I.A.NO.VIII

This application is filed by plaintiff U/Sec.114 R/w. Sec.151 of C.P.C. with a prayer to review the order passed on I.A.No.7 which was filed for impleading proposed defendant No.7 as a necessary party.

2. In the accompanying affidavit the plaintiff has sworn that she has filed suit for partition and separate possession of the suit properties from defendants. Further during the pendency of suit the proposed defendant No.7 sought to be impleaded in this suit, however the said application is rejected for non-compliance of mandatory provision U/Sec.80(C)

of C.P.C. However, the plaintiff in her accompany affidavit filed annexed with I.A.No.7 she had stated that the prior notice was issued to the proposed defendant No.7 after lapse of statutory period the application was filed. Hence, there is no ground for rejecting the I.A.No.7 on the non-compliance of mandatory provision. Hence, she has prayed to review the order passed on I.A.No.7.

3. On the other hand, the DGP has submitted no objection to allow the application.

4. Perused the application and materials available on record.

5. The following points arise for my consideration :

POINTS

1) *Whether the plaintiff has made out sufficient grounds to allow the present application ?*

2) *What order ?*

6. My findings on the above points are as under :

Point No.1 : In the Affirmative,

Point No.2 : As per final order for the following :

REASONS

7. Point No.1 : It is admitted fact that the plaintiff has filed the suit for partition and separate possession. Further the plaintiff had filed I.A.No.6 and I.A.No.7 to implead proposed defendants No.6 and 7 in the suit. On perusal of the order dated 14.09.2021 the I.A.No.6 was came to the allowed and I.A.No.7 was came to be rejected. On going through the observations made at Para No.11 it has observed that since the proposed defendant No.7 is Government Entity prior to filing the application the plaintiff had to issue notice U/Sec.80 of the C.P.C. on that ground the I.A.No.7 was rejected. Further on going through the I.A.No.6 and annexed affidavit it is ascertained that the plaintiff in the affidavit has specifically stated that she had complied with the mandatory provision U/Sec.80(C) of the C.P.C. on 03.07.2020. The I.A.No.7 was filed on 26.11.2020 which is after completion of more than three months and the prescribed period U/Sec.80 of C.P.C. is 180 days. Hence, after completion of statutory period the plaintiff has filed the said application to implead the proposed defendant No.7. Now coming to the legal aspect with respect to reviewing the order, the Order

47 Rule-1 of C.P.C. deals with the same, which is extracted herein below:

“Order-47 Rule-1 of C.P.C.:

Application for review of judgment

(1) Any person considering himself aggrieved-
(a) by a decree or Order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or Order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or Order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or Order made against him, may apply for a review of judgment to the Court which passed the decree or made the Order.

(2) A party who is not appealing from a decree on Order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the

appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.”

8. The above said provision states that if there is an error or apparent or face of the order itself then the order can be viewed. Here in the case on hand ,as already stated even though there is averment in the affidavit that the plaintiff has complied with the mandatory provision on that basis without observing the same the order has been passed on I.A.No.7, hence, i.e., self-evident and the order can be reviewed. Moreover, the proposed defendant No.7 has also submitted no objection to review the said order. Hence, in the interest of justice and to determine and adjudicate the rights of the parties in the present suit the said proposed defendant No.7 is also necessary party and apparently it appears that even though the defendant No.7 is necessary party only on the basis of mandatory provision the said application was rejected. Hence, the plaintiff has made out the ground and since there is a apparent error in the order passed on I.A.No.7 it is just and necessary to

review and correct the same. Hence, I answer Point No.1 in the “Affirmative”.

9. Point No.2 : In view of the above discussions, I proceed to pass the following....

ORDER

The I.A.No.VIII filed by the plaintiff U/Sec.114 R/w. Sec.151 of the C.P.C. is hereby ‘Allowed’ and the order dated 14.09.2021 is hereby reviewed and recalled, thereby the I.A.No.7 is hereby ‘Allowed’. The plaintiff is hereby permitted to implead the proposed defendant No.7 as defendant No.7.

**C/c. IV Addl. Civil Judge & J.M.F.C.,
Belagavi.**

For amendment of plaint and furnishing
amended plaint.

Call on

**C/c. IV Addl. Civil Judge & J.M.F.C.,
Belagavi.**