



ORDERS ON I.A.NO.7

- 1.** The defendant No.1 filed I.A No.7 U/o I Rule 10 (2) of CPC by praying to delete him this case .
- 2.** In the affidavit filed accompanying IA it is stated that in O.S No.619/2009 decree as been passed against defendant No.2 to 6 in this case no relief claimed against defendant No.1. In the M.A No.36/2018 before Honorable Ist Addl. Senior Civil Judge, the plaintiff filed memo stating that is not claiming any relief against defendant No.1 and withdrawn on appeal against defendant No.1. The suit against defendant No.1 is not maintainable. Hence defendant No.1 prays to struck out his name in the plaint.
- 3.** Per contra, the plaintiff contended that the decree obtained in O.S No.619/2009 is a colluding decree. In an appeal preferred on O.S No.619/2009 the defendant No.1 is contesting party. Hence he is necessary party to the proceeding. The prayer sought in the I.A No.7 is not tenable. Hence prays to reject I.A No.7.
- 4.** Heard on both sides.
- 5.** The plaintiff filed this suit by seeking relief of declaration and permanent injunction. It is the submission of plaintiff that decree passed in O.S No.619/2009 dated 30.01.2012 is not binding on him. On perusal of Judgement of O.S No.619/2009 the defendant No. herein is the sole defendant. Merely the plaintiff withdrawn claim against defendant No.1 in M.A No.36/2018 it cannot be held that the plaintiff withdrawn entire claim against defendant No.1 in this suit. On perusal of plaint

averments this court is of a view that defendant No.1 is the necessary party to this suit as the claim is based on decree passed in O.S No.619/2009. Hence I answer I proceed to pass the following:

ORDER

The I.A No 7 filed by defendant No.1 Under order I Rule 10 (2) of CPC is hereby rejected.

For cross-examination PW-1

Call On 18.08.2022

Sd/-
I Addl Civil Judge and JMFC
Belagavi