

KABG210024972016



ORDER ON I.A.II

The applicants/petitioners have filed this application seeking an order of the court to implead proposed respondent No.8 & 9 as respondent No.8 & 9 in this petition.

Proposed respondent No.8 :

The Government of Karnataka
represented by Deputy Commissioner, Belagavi.

Proposed respondent No.9 :

The Special Land Acquisition Officer,
Hipparagi Project, Athani.

In the affidavit accompanying application, the petitioner No.2 has stated that the proposed respondent No.8 and 9 are necessary parties, since the suit properties are acquired by the Government for the purpose of Hipparagi Project. He has further stated that the amount of Rs.4,85,302/- is granted with respect to the said acquisition. He has

also stated that the respondent No.1 is trying to get the entire amount released in his favour despite the petitioners having 1/3rd share in the said properties as per the preliminary decree. Therefore, in order to seek orders against the proposed respondents, the petitioners have filed the present application.

I have heard the counsel for petitioners.

The petitioners have filed the present petition seeking an order to set aside the order of dismissal passed in FDP No.23/1991. As per the provisions of law, the petitioners herein are expected to satisfy the court with respect to their non-appearance before the court and the delay in filing petition. Except the parties to the FDP, no other person needs to be heard by this court while deciding the present petition. The petitioners cannot seek an order to implead the persons who are not parties to the suit and FDP proceedings in the present petition. No purpose will be served even if the proposed respondent No.8 and 9 are added. The proposed respondent No.8 & 9 are not necessary parties. Therefore, I am of the opinion that the application filed by the petitioners seeking an order to implead the Government and Land

Acquisition Officer, Athani needs to be dismissed. Hence, I pass the following:

:: ORDER ::

I.A.II filed by the petitioners U/o. I Rule 10
(2) of CPC is hereby dismissed.

I Addl.Civil Judge & JMFC., Athani.

:: ORDER ON I.A IV TO VI ::

IA No.IV to VI U/sec. 5 of Limitation Act, U/o. XXII rule 9 of CPC and U/o. XXII Rule 2 & 4 of CPC are filed by the petitioners seeking an order to impale the LRs of deceased respondent No.7 in the petition as respondent No.7(a) to 7(c).

Perused the applications and heard the counsel for the petitioners.

The respondents have not appeared before the court despite service of notice.

The petition is filed seeking an order to set aside the order dismissing the FDP No. 23/1991. The respondent No.7- Rayagouda was party to the FDP as per the averments of the petition. The respondent No.7 had died on 19.02.2010 i.e., earlier to the institution of the present petition. The petitioners ought to have made the LRs of the deceased respondent No.7 at the time of institution of the petition itself. The applications filed by the petitioners U/o. XXII of CPC may not be maintained since the provisions are applicable, when the party dies during the pendency of the petition.

However, in view of the decision of the Hon'ble Supreme Court of India in **Pankajbhai V/s Jethabhai in (2017) 9 SCC 700**, the present applications are to be allowed in the interest of justice. In order to provide opportunity to the LRs of the deceased respondent No.7 to proceed with the matter and to put an end to the litigation, it is necessary to allow the applications. Hence, I pass the following:

ORDER

IA.IV U/sec. 5 of Limitation Act, I.A.V U/o
XXII rule 9 of CPC and I.A. VI U/o.XXII Rule 2 & 4
of CPC, are allowed.

The legal representatives of the respondent No.7, who are listed in IA.VI, are brought on record and added to the petition as respondent No.7(a) to (c).

The petitioners shall carry out amendment to the cause title of the petition and file the amended petition by next date of hearing.

I Addl. Civil Judge & JMFC.,Athani.

:: ORDER ON I.A. VII ::

The applicants/petitioners has filed this application seeking an order of the court to implead proposed respondent No.8 as respondent No.8 in this petition.

Proposed respondent No.8 :

Smt. Sushilabai Shankaragouda Patil,
Age: 58 years, Occ: H.H. work,
R/o. Hulagabali, Tal: Athani, Dist Belagavi.

In the affidavit accompanying application, the applicant/petitioner No.2 has stated that the proposed respondent No.8 was the petitioner No.7 in FDP No.23/1991. He has further stated that the said FDP came to be dismissed on 23.11.2005. He has further stated that at the time of filing the present petition, due to typographical error, the proposed respondent No.8 was not added as a party to the petition. Therefore, the petitioners have sought an order to implead the proposed respondent No.8 as respondent No.8 in the present petition.

Though the notice is served on the respondent No.8, she has not appeared before the court.

The respondent No.8 is a necessary party to the present petition. The present petition is for setting aside the order of the dismissal in FDP No. 23/1991. If the respondent No.8 is not added to the petition, the provisions U/o. IX Rule 9 of CPC, which mandates service of notice on all the parties cannot be complied with. Therefore, the application I.A.VII filed by the petitioners needs to be allowed. Hence, I pass the following:

:: ORDER ::

I.A.VII filed by the petitioners U/o. I Rule 10 (2) of CPC is hereby allowed.

The petitioners are hereby directed to implead proposed respondent No.8 as respondent No.8 in this petition.

The petitioners are hereby directed to file amended petition after adding the respondents No.7(a) to (c) and respondent No.8 in the petition.

For amendment and amended petition:
25.1.2023.

I Addl.Civil Judge & JMFC., Athani.