

ORDER ON I.A. No. I

This is the application filed by defendant No.2 U/sec. 151 of CPC seeking to set aside order taking objection to commissioner report as not filed. It is submitted that, defendant No.2 being the co-operative bank has filed objection to main petition and plaintiffs have filed false suit in O.S No.245/2008 for partition and separate possession in respect of five properties belonging to defendant No.1 being the manager of the family consisting of plaintiffs and defendant No.1. It is submitted that, he has taken loan from the bank to meet family necessity and as he has not repaid the same, the bank has issued legal notice to him. The defendant No.2 bank has filed recovery petition before competent authority and hence, through plaintiffs, defendant No.1 has got filed this suit and the same was dismissed and subsequently, in R.A, without impleading the bank as party, plaintiffs succeed in the appeal and hence, have filed this final decree proceedings. Due to the promise and assurance given by plaintiffs and defendant No.1, the bank authority had not filed WS and contested the suit. Hence, it just and necessary to file objection to the court commissioner report to meet the ends of justice. Accordingly, prayed to allow the application.

2. On the other hand, learned counsel for plaintiffs has filed objection to this application denying the entire contents and specifically contended that, in spite of being party to the original suit and in appeal, the defendant No.2 bank has not filed written statement and objection and it is only a formal party to the suit. Based on judgment and decree passed in R.A No.22/2009, plaintiffs have filed this final decree proceedings and defendant No.2 is neither having any right in suit properties nor has any claim by way of

partition over the same. No appeal is filed by defendant No.2 on the R.A judgment and the commissioner report is legal and valid. On these grounds, prayed to reject the application.

3. Heard learned counsel for plaintiffs and defendant No.2 and perused the materials on record.
4. This petition is filed for drawing final decree on the judgment and decree passed in R.A No.22/2009 and subsequently, the court proceeded to appoint court commissioner who has filed the report. Thereafter, learned counsel for plaintiffs had submitted no objection to allow commissioner report. Wherein, defendant No.1 & 2 did not represent before the court and hence, their objection was taken as nil and proceeded to post the case for hearing. Subsequently, defendant No.2 has filed this application seeking to set aside the said order and permit him to file objection to commissioner report. The same is opposed by learned counsel for plaintiffs.
5. On perusal of entire materials on record, it is observed that, it is just and necessary to take objections filed on commissioner report by defendant No.2 on record and to pass necessary orders on commissioner report on merits. The contentions or averments by parties with regard to not filing appeal and with regard to the claim of bank over suit properties for the outstanding loan taken by defendant No.2 will be adjudicated subsequently. At this stage, without going into merits of the case, it is just and proper to permit defendant No.2 to file objection to commissioner report. Accordingly, I proceed to pass the following;

: ORDER :

I.A No.1 filed by defendant No.2 U/sec.151 of CPC is hereby allowed.

Defendant No.2 is permitted to file objection to commissioner report. Accordingly, the objection filed on commissioner report is taken on record.

For hearing on commissioner report.

Call on 06.02.2025.

Civil Judge & JMFC, Banahatti.