

05-07-2023

ORDERS ON I.A.NO.2

The defendant No.2 by name Smt. Andal has filed this I.A.No.2 under Order 1 Rule 10(2) of C.P.C. and she seeks to delete her name in the above suit.

2) In support of the I.A.No.2, the defendant No.2 has filed her affidavit by deposing on oath. In brief, she has contended that, the plaintiff has filed the suit for Declaration of ownership and Permanent Injunction. The plaintiff has wrongly impleaded the defendant No.2 in the suit and the same has resulted in mis-joinder of parties and there is no cause of action for the plaintiff to file the suit against the defendant No.2. Further, the G.P.A. dated 03.05.1998 executed in favor of Sri. Venkataramana Iyengar and to the defendant No.2 has been ceased to operate on the death of Sri. Venkatarama Iyengar in the year 2013. The defendant No.2 has also issued a Legal Notice dated 21.02.2022 to the plaintiff and others about recusing herself from acting as the G.P.A. Holder and the said fact has been duly acknowledged by the plaintiff in his plaint averments. Therefore, there is no cause of action against the defendant No.2 to maintain the above suit. For all these reasons, the defendant No.2 has prayed for allowing the I.A.No.2.

3) The plaintiff has filed objections to the I.A.No.2 of defendant No.2. His main contentions are of total denial of the averments made by the defendant No.2 in her affidavit annexed to the I.A.No.2. The plaintiff has prayed for dismissal of the I.A.No.2.

4) Both parties have addressed their oral arguments.

5) By appreciating the facts and circumstances leading up to filing of the I.A.No.2, the following points are arisen for my consideration.

POINTS

i) Whether the defendant No.2 shows that, she has been joined in the suit by the plaintiff resulting in mis-joinder of parties as contended in the I.A.No.2?

ii) What Order?

6) Now, my answers to the above points are as follows:

Point No.1:- In the Affirmative

**Point No.2:- As per the final Order,
for the following:**

REASONS

7) **Point No.1:-** I have already narrated the facts pleaded by the defendant No.2 and by the plaintiff at the inception of this Order and therefore, it is not necessary for me to reiterate the same once again here.

8) The suit is filed for Declaration and Permanent Injunction filed by the plaintiff Smt. Prema Ananthram against the defendants No.1 to 3 and by way of filing this suit, the plaintiff has pleaded that, the defendant No.2 is the G.P.A. Holder and on the strength of said document dated 03.05.1998, the defendant No.2 joined hands with other defendants and came to the suit schedule property to put claim on the same. But, the counsel appearing for the defendant No.2 has drawn my attention to the documents of the plaintiff presented along with the plaint. In the said documents, the document No.9 is the copy of the Legal Notice dated 21.02.2022 issued by the defendant No.2 to the plaintiff and others. In the said notice, the defendant No.2 has clearly expressed her unwillingness to act as joint G.P.A. Holder on the death of other G.P.A. Holder Sri. C. N. Venkatarama Iyengar. The said notice has been mentioned by the plaintiff in Paragraph No.11 of the plaint and the plaintiff is well aware of the intention of the defendant No.2 from recusing herself from acting as the joint G.P.A. Holder. Therefore, when the defendant No.2 herself has issued Legal

Notice by submitting her unwillingness on 22.02.2022 to the plaintiff, the plaintiff filing this suit by arraying the defendant No.2 as one of the parties and filing the suit on 12.07.2022 appears to be uncalled for. The plaintiff has also not stated any specific pleadings against the defendant No.2 about the acts resulted in impleading the defendant No.2 as one of the parties to the suit. There are no Legal Notices or Police Complaints produced to show about lodging of complaint against the defendant No.2 in respect of the alleged cause of action against the defendant No.2. Therefore, by considering all these factors into account, I hold that, the defendant No.2 has showed that, she has been mis-joined in the suit by the plaintiff. Accordingly, I answer the **Point No.1 in the Affirmative.**

9) **Point No.2:-** For the above discussion, I proceed to pass the following:

ORDER

The I.A.No.2 filed by the defendant No.2 under Order 1 Rule 10(2) of C.P.C. is hereby allowed.

The name of the defendant No.2 is deleted from the suit and cause title of the plaint.

The plaintiff is directed to amend the plaint and furnish amended plaint on the next date of hearing.

Call on for amended plaint by 07.08.2023.

(Dictated to the typist directly on computer and corrected and then pronounced by me in the open Court on 05th July 2023).

**Prl. Senior Civil Judge & J.M.F.C.,
Devanahalli.**