

OS No.937/2006

ORDERS ON I.A. NO.45

The plaintiff has filed the application U/O-I Rule 10(2) R/w Sec.151 of CPC and prayed to implead the proposed defendant No.12 TO 15 as proper and necessary party to the suit.

In the accompanying affidavit of the plaintiff contended that the during the pendency of the suit the defendant No.11 and their family members have executed registered sale deed in favour of proposed defendants in respect of Sy. No.27/2.

Hence they are necessary parties to suit for the relief of partition and separate possession.

Objections filed by the proposed defendants and denied the averments of petition and prayed to Dismiss the said application.

Heard both side, perused the application, objections and entire materials on record.

It is settled principle of law that, if any person who wants to implead in a suit as party, either he should be a necessary party or proper party. It is also equally settled that there is a essential distinction between a necessary party and a proper party to

the suit. Necessary party is one whose presence is indispensable to the constitution of the suit, against whom the relief is sought and without whom no effective order can be passed. A proper party is one in whose absence an effective order can be passed, but whose presence is necessary for a complete and final decision on the question involved in the lis. In other words, in absence of necessary party, no decree can be passed, while in the absence of proper party a decree can be passed so as far as it relates to the parties before the Court. His presence, however, enables the Court to adjudicate more “effectively and completely”.

Two tests have been laid down for determination the question where a particular party/parties is/are a necessary party to a proceedings/lis : i) there must be a right to some relief against such party in respect of matter involved in the proceedings in question - ii) it should not be possible to pass an effective order in the absence of such parties. By keeping the above settled position of law in mind, let me consider the assertion and denial of the parties to adjudicate the application.

Admittedly, the said suit filed by the plaintiff for the relief of partition and separate possession. Admittedly, the impleading applicants are pendente-lite purchasers. It is well settled principle of law that in a partition suit, the scope is limited to determination of share among co-sharers. Introduction of third party disputes would not change the nature of the suit and there is no cumulative effect in determination of shares of the parties.

Hence the pendent-lite purchasers neither a necessary party nor a proper party in this suit for Partition. Hence, I proceed to pass the following :

ORDER

IA No.45 filed by the plaintiff U/O-I Rule10(2) R/w Sec.151 of CPC is hereby dismissed.

Addl. Written statement of defendants is taken as not filed.

For Arguments of plaintiff.

Call on 05-08-2006

(VIJAYALAXMI GHANAPUR)
I Addl. Sr. Civil Judge and JMFC.
Devanahalli.