

03-04-2024

Pets. - G.V.R.,
Resp.1(a to d) R2 (a to d) - A.H.,
Resp.3 - A.H.C/ V.M.G.,
Resp.2(c) R4 (a & b) - Exparte
Resp.6 - Exparte
Resp.5 (b to k) - M.G.,
Resp.4 (a & b) - G.S.,
Imp.Appl - P.B.N.,

ORDER I.A.No.VII

The Instant application has been filed by the impleading applicant U/o.I Rule 10(2) R/w.Sec.151 of C.P.C to implead him as a respondent in the proceedings.

2. In the affidavit, it is stated that the petitioners have obtained preliminary decree in O.S.No.312/2007. The Sy.No.28 of Chapparadahalli, measuring 4 acres 36 guntas, originally belong to the respondent No.5 herein. The respondent No.5 sold the same in favour of respondent No.6 to an extent of 2 acres of land through registered Sale Deed dated 21.04.2007. The respondent No.6 sold the said land in favour of the present applicant vide, registered Sale Deed dated 03.09.2009 without disclosing about O.S.No.312/2007. The family members of the

applicant entered into partition deed dated 03.01.2020 and divided the properties including the said property. The said property has been acquired by K.I.A.D.B recently. The impleading applicant is proper and necessary party to the suit. Hence, prayed to allow the application.

3. The counsel for petitioner filed objection to the present application by stating that the Sale Deed was entered into during the pendency of the suit and the court has already declared that the plaintiff is entitled for half share in the suit schedule property. The court has also held that the Sale Deed dated 24.01.2007, standing in the name of defendant No.6 shall remain intact as for as half share the defendants are concerned. Hence, prayed to reject the application.

4. The respondent No.1 and respondent No.4(a) & 4(b) also filed separate objection to the present application by stating that the same is not maintainable under law. They have reiterated that the court has passed Judgment and decree in O.S.No.312/2007 by stating that the sale deed standing in the name of respondent No.6 shall stand intact in respect of half share in the suit schedule property. The application is not maintainable under law. It is further stated that aggrieved by the Judgment passed in O.S.No.312/2007, the respondent No.5 herein filed RA.No.389/2012 before Hon'ble V Additional District & Sessions Judge, Devanahalli

and during the pendency of the appeal the plaintiff and the defendant died. The legal heirs were brought on record. During the pendency of the petition K.I.A.D.B has acquired the suit schedule property for the purpose of development. Subsequently, the SLAO has been made as respondent No.7 in this proceedings. Hence, prayed to dismiss the application .

5. Heard both sides.

6. **The following points would arise for my consideration:**

1. Whether the impleading applicant proves that he is either a necessary or proper party to the proceedings ?
2. What order?

7. **My answer to the above points are as follows:**

Point No.1 : **In the Affirmative**

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

REASONS

8. **Point No.1:** It is not in dispute that, O.S.No.312/2007 was filed by the original plaintiff by name

Bhagawanthappa, seeking Partition and Separate Possession of suit schedule properties. It is also not in dispute that the said suit came to be decreed and the court has passed preliminary decree by allotting half share of the plaintiff and also clearly stated that the Sale Deed standing in the name of respondent No.6 shall remain intact in so far as remaining half portion of the suit schedule properties is concerned. It is pertinent to note that the respondent No.5 sold an extent of 2 acres in Sy.No.28 of Chapparadahalli Village in favour of respondent No.6 as per registered Sale Deed dated 21.04.2007. Immediately, the respondent No.6 was made as a party to the suit in O.S.No.312/2007. It is also clearly appearing that the father of the present applicant purchased the said property from respondent No.6 as per Sale Deed dated 03.09.2009. The property was subsequently acquired by K.I.A.D.B. It is to be noted that the petitioners have impleaded K.I.A.D.B as a party to the proceedings. However, the present applicant had purchased the very same property much prior to acquisition by K.I.A.D.B. The petitioner did not choose to implead the present applicants as a parties to the proceedings. Though, the present applicants are not the necessary parties to the proceedings, they are proper parties to the same. The matter cannot be adjudicated effectively in absence of the proposed respondent as the land purchased by their father has been acquired by K.I.A.D.B and the question of disbursement of compensation amount is also involved. The learned counsel

for the petitioners are relied upon a decision in Civil Appeal No.6370/2022, wherein the Apex Court has considered an application filed U/o. I Rule 10 of C.P.C and held that the applicant was not a party to the suit and he is not a necessary party for adjudication of the matter. However, in this suit the court has already reserved the right of the respondent No.6 in respect of half portion in the suit schedule property and the impleading applicants step in to the shoes of the respondent No.6. The facts and circumstances of the present case is completely different. Hence, the above decision is not applicable to the case on hand. Under such circumstances, I am of the opinion that the proposed respondents are proper parties to the proceedings. Hence, I answer **Point No.1 in the Affirmative.**

9. **Point No.2** : In view of the above findings, I proceed to pass the following:

O R D E R

I.A. No.VII filed by the impleading applicants U/o.I Rule 10(2) R/w.Sec.151 of C.P.C is hereby allowed.

The petitioners are directed to implead the applicants as respondents in the proceedings.

For amendment and
amended petition.

R/by: 01.06.2024.

Sd/-
**Addl. Senior Civil Judge & J.M.F.C.,
Devanahalli.**