

05.11.2020

For order on I.A. No.8

ORDERS ON I.A. No.8

The instant I.A. No.8 is filed by the applicant/ defendant No.32, U/o.1 rule 10 (2) of CPC, with a prayer to transpose him as plaintiff No.2 in this suit, for the reasons mentioned in the accompanying affidavit.

2. On the other hand, the learned counsel for the defendants No.9 to 21, learned counsel for proposed defendants No.18 to 21 and learned Advocate for defendants No.1 to 4 have filed separate statements of objections contending that contents of I.A. and affidavit are false, frivolous and not maintainable either in law or on facts. The allegation of the applicant that the plaintiff on record has colluded with the defendants, therefore, it is necessary to permit him to transpose as plaintiff No.2 to prosecute the matter that he got share in the suit properties is false and misleading. The applicant/ defendant No.32 has not made out any case for transposing him as plaintiff No.2. As per the proposed defendants No.18 to 21, they have purchased one of the suit properties during auction sale, they are bonafide purchasers for value without notice, they are not necessary parties to this suit. It is contended by

the defendants No.1 to 4 that there is no conflict of interest between plaintiff and the defendants and defendant No.28 is the father of plaintiff and defendant No.32 and it is collusive suit. Suit is barred by law of limitation. Only to drag on the matter, this instant I.A. is filed.

3. Heard and perused.

4. The following points arise for my consideration:

1) Whether the instant I.A. No.8 filed by the applicant/ defendant No.32, U/o.1 rule 10(2) of CPC, deserves to be allowed?

2) What order?

5. My findings on the above points are as under:

Point No.1 : In the Affirmative.

Point No.2 : As per final order and for the following:

REASONS

6. **Point No.1:** Before I advert to the grounds urged by the applicant/ defendant No.32, it is necessary to note sequence of events as they unfolded leading to filing of this I.A. The plaintiff who is brother of present defendant No.32 son of defendant No.28 has filed this suit against defendants, for the relief of declaration that judgment and

decree passed in OS No.273/2003 by the I Addl. Senior Civil Judge, Hubballi, is null and void and not binding upon him and his shares, for the relief of declaration that alleged settlement between defendants No.27 to 31 with the predecessor of defendants No.1 to 26 is ab initio, null and void and not binding upon him and for the relief of partition and separate possession of his lawful share in the suit properties including amount of compensation and the mesne profits. It is contested by the defendants on various grounds. Already issues have been framed. The plaintiff has filed his affidavit, examined as PW.1 and got documents marked. But when the matter was posted for further evidence of the plaintiff, so many I.As. came to be filed. But PW.1 has continuously remained absent to face further cross-examination. Meanwhile defendant No.13 reported dead, I.As. came to be filed and they are allowed.

7. The allegation of the applicant under instant I.A. is, as per his written statement, he has got share in the suit properties, but the plaintiff is colluding with defendants and he is not diligent enough to prosecute the suit. Therefore, it is necessary to transpose him as plaintiff No.2, otherwise he would be subjected to injustice. It appears that

plaintiff on record has not filed any objections to this I.A. and defendant No.32 is none other than brother of plaintiff.

8. The learned counsel for the applicant/ defendant No.32 has relied upon the ruling of our Hon'ble High Court of Karnataka, reported in **2009 (6) Kar.L.J. 174, (K.L. Shivananjamurthy -vs- K.L. Nagaraj @ K. Karehalli)**, wherein it is held as under:

**“Civil Procedure Code, 1908,
Order 1, Rule 10(2) – Suit for
partition – Defendant in suit filed
application under Order 1, Rule
10(2) seeking transposition of
himself as plaintiff – Court
allowed application – Aggrieved
original plaintiff filed writ
petition challenging the order –
Held – In partition suit each
plaintiff is a defendant and
defendant is plaintiff – Every
legitimate sharer can claim
partition and allotment of his
share – It is just and expedient
to allow the application to come
on record as plaintiff and
prosecute the suit – Writ petition
dismissed – [Constitution of**

**India, Articles 226 and 227] –
Writ petition.]”**

9. Considering the nature of the suit, it is well settled principle that in a partition suit, each plaintiff is a defendant and defendant, the plaintiff. Every legitimate sharer can claim partition and allotment of share by paying court fee. Since it is an old matter, considering the allegation of the applicant and by relying upon ruling of our Hon'ble High Court (supra), it appears that the applicant is entitled to be transpose as plaintiff No.2. The allegation of the defendants that applicant has no share in the suit properties and claim of the applicant that he is one of the sharers of the suit properties is a subject matter of trial. So, in the interest of justice and equity, it is necessary to allow the I.A. and transpose the applicant as plaintiff No.2, if he pays requisite court fee on his share. If this I.A. is allowed, no harm or prejudice will be caused to the contesting defendants. Hence, I answer point No.1 in the **Affirmative**.

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

ORDER

I.A. No.8 filed by the applicant/ defendant No.32, U/o.1 Rule 10(2) of CPC, is hereby allowed.

The applicant/ defendant No.32 is permitted to come on record as plaintiff No.2 and prosecute the suit by paying requisite court fee on his claim.

For amendment of the plaint and furnishing amended plaint, call on 18.11.2020.

I Addl. Senior Civil Judge, Hubballi.