

ORDERS ON I.A.No.16

This is an application filed by the plaintiffs under order 1 rule 10(2) of CPC praying the Hon'ble Court to implead one Rajanikanth Saraf S/o Devaraj Saraf as proposed defendant No.16 in the interest of equity and justice.

2. In the accompanying affidavit 9th plaintiff has submitted that on 16.11.2015 plaintiffs had filed similar application under order 1 rule 10(2) of CPC to implead one Siddaramappa and Rajanikanth Saraf as proposed defendant No.16 and 17. Rajanikanth Saraf did not file objections. On the other hand, this Court was pleased to reject the application. What can be gathered from the order dated 10.2.2016 is that the details of the properties sold by the 1st defendant in favour of S.C. Siddaramappa and Rajanikanth Saraf was not disclosed in the affidavit. The principles of res-judicata does not apply to this case as there has been no adjudication with regard to the question whether the proposed defendants are proper and necessary parties and whose presence is necessary to effectively adjudicate the matter involved in the suit. Hence, the application is not barred by principles of res-judicata. The sale deed dated 17.1.1990 under which 1st defendant sold shop bearing No.48-A in favour of proposed defendant No.16 under sale deed dated 8.8.1990 the 1st defendant sold property in favour of Siddaramappa. Now Rajanikanth Saraf is the owner of shop bearing No.48-A, 46-A, 47-A situated in RMC yard, Arsikere. These properties are ancestral properties and 1st defendant has no right to alienate them. Under these circumstances, the said Rajanikanth Saraf is the proper and necessary party to the present proceedings. Hence, the application.

3. On the other hand, the proposed defendant No.16 has filed objections to the said application contending that earlier the similar application filed by the plaintiffs was rejected and hence, the present application is barred by principles of res-judicata which has to be challenged only by way of appeal and the similar application is not maintainable. Now the proposed defendant has purchased the property from the 1st defendant bearing katha and assessment No.1116, measuring east-west 35 feet X 100 feet site in APMC yard on 17.1.1990. The sale deed in favour of proposed defendant dated 17.1.1990 and 8.8.1990 ought to have been challenged by the plaintiffs within the period of 12 years as per the Article 109 of Limitation Act. Even on this ground the said application is not maintainable. Contending that no valid grounds are made out for allowing the said application, prays for rejecting the same.

4. Heard both sides. Perused the written arguments filed on behalf of impleading defendant No.16.

5. The only points that would arise for my considerations are:

- 1] Whether plaintiffs have made out sufficient grounds to allow the application?
- 2] What order?

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

- Point No.1 : In the negative
Point No.2 : As per final order
for the following:

REASONS

7. **Point No.1:** The above suit is being filed by the plaintiffs for the relief of partition and separate possession.

It is noticed that initially the suit was filed as against defendants 1 to 13. Subsequently defendants 14 and 15 are impleaded. It is seen from the records that admittedly I.A.No.13 was filed by the plaintiffs on 16.11.2015 for impleading defendants Nos.16 and 17 i.e., S.C.Siddaramappa and Rajanikanth Saraf. The proposed defendants have filed objections to the said application and on 10.2.2016 the said application came to be rejected. It is stated that proposed defendants had purchased the properties from the first defendant. Therefore, it was contended that they were necessary parties to the suit. But the predecessor in office had rejected the prayer of plaintiffs on the ground that plaintiffs have not disclosed the details of the properties, which were sold in favour of proposed defendants by the 1st defendant. Again since the relief was barred by Article 109 of the Limitation Act, the application came to be rejected. Admittedly, no appeal is being preferred as against the said order.

8. Now similar application is being filed by the plaintiffs under the same provision for the same relief to implead the said Rajanikanth Saraf on record. Interestingly in I.A.No.16 plaintiffs are not interested to bring the other purchaser S.C. Siddaramappa as a party to the suit for the reasons best known to them. It is one of the cardinal principle of law that any party to the suit will have to approach the Court with clean hands. There should not be any suppression of material facts. Here plaintiffs contended that proposed defendants were the purchasers and they were proper and necessary parties to the suit. Again the plaintiffs give up one proposed defendant and want to include only Rajanikanth Saraf as a party to the suit without disclosing the reason for giving up the other

purchaser. In other words the plaintiffs cannot blow hot and cold at the same time. So, equity does not favors plaintiffs for obtaining the relief in their favour. At the same time it is also noticed that similar application filed by the plaintiffs on the same grounds which was already rejected earlier is not maintainable in view of principles of res-judicata. The plaintiffs contended in the application that since there is no adjudication of the rights of the proposed defendants, the principles of res-judicata does not arise. But in my opinion the said submission is not maintainable, because the principles of res-judicata applies to the interlocutory applications also. In this regard the learned Advocate for proposed defendant has relied upon the decisions reported in **AIR 1976 Jammu and Kashmir, page 72** and contended that the principles of res-judicata applies to the interlocutory orders. Hence, the objection raised by the plaintiffs is not maintainable. Viewing from any angle, no valid grounds are made out for allowing the said application. The proper remedy for plaintiffs is to challenge the earlier order instead of filing the similar application again. Hence, this point is answered in the negative.

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

ORDER

I.A.No.16 filed by the plaintiffs under order 1 rule 10(2) of CPC is hereby rejected.

No order as to costs.

**(Smt.Nirmala K.)
Senior Civil Judge & JMFC,
Arasikere.**