

IN THE COURT OF CIVIL JUDGE AND JMFC, SAKALESHPURA.

**Present : Sri. Nagesh Patil., B.com., L.L.B.,
Civil Judge and JMFC.,
Sakaleshapura.**

ORIGINAL SUIT No.53/ 2018

Dated this 2nd day of December 2019

Plaintiff : Smt. Kavitha & Others

-V/s-

Defendants : Sri.Ravendra & Others

Parties to IA No. IX

Applicant/defendant : Land Acquisition Officer
No.9

-V/s-

Opponent/Plaintiff : Sri.Ravendra & Others

ORDER ON I.A No. IX

The defendant/applicant has filed I.A No.9 under Order 7 Rule 11(b) of C.P.C. with a prayer to reject the suit against the defendant No.9. The plaintiff/opponent filed objection to I.A.

2. Heard both the sides.

3. The point arise for the consideration of this court is:

“Whether the applicant/defendant No.9 has made out grounds to allow the application”.

4. On perusal of the pleadings and hearing on both sides the point is answered in the **Negative** for the following...

REASONS

5. **Point No.1:** The counsel for defendant No.9 filed memo of facts in support of IA and contended that plaintiff has filed the suit against the defendant No.1 to 8 for the relief of partition and permanent injunction against the defendant No.9 to restrain the defendant No.9 from performing any functions and act in the land acquired for the extension of National Highway passing thorough the suit property. It is further stated that, the National Highway is a statutory body performing his functions and duty for the public purposes. The provisions of National Highway Act is applicable. The suit property is acquired as per the provisions of the act after due declaration from the Central Government and publication in gadget and News paper under the provisions of Sec.3(d)(4) of the Act a declaration made by the central Government under of Sec.1 shall not be called question in any Court or by any other authority. The provisions of the act are attracted and therefore the suit filed by the plaintiff before the Court is not maintainable under law. As there is a specific bar under the above provisions of the act. As per the power of Civil Court is specifically taken away Civil Court have no jurisdiction to entertain such a suit or grant any

injunction against the statutory body. If any injunction is granted against the statutory body it will certainly causes prejudice to the public and an account of such an order if the public work is delayed the public work will be put to great loss and hardship no in justice will be caused to the plaintiff if the relief sought is refused. The main intention of the plaintiff in filing the suit is to get a share in the property and the compensation by injecting the statutory body from performing its functions and to cause hardship to the public by delaying the public work and accordingly prays to reject the suit.

6. The plaintiff filed objection to IA and contended that the IA is not maintainable either in law or on facts of the case. The plaintiffs are having share in the suit property as such plaintiff filed suit for partition and defendant No.9 is the necessary party, as such defendant No.9 is made as party to the suit. If the defendant No.9 is alone is made as a party then the contention of the defendant No.9 is acceptable as stated in the application but defendant No.1 to 8 are contesting parties and defendant No.9 is necessary party. The suit property is acquired by the National High Way Authorities. As such the plaintiff gave notice to the defendant No.9 not to disburse the compensation amount in the name of defendant No.1 to 8. In spite of it defendant No.9 colluding with the defendant No.1 to 8 disbursed the compensation amount and plaintiffs have got right to challenge about the

amount disbursed by the defendant No.9. As such the presence of the defendant No.9 is necessary to question about the disbursement made by the defendant No.9 in favour of defendant No.1 to 8. Hence, the defendant No.9 is necessary party and if application is allowed the plaintiff will be put to irreparable loss and injury. The defendant No.9 to correct the mistake committed by it filed this application. Accordingly prays to dismiss the application.

7. From the above pleadings it reveals that the plaintiff filed suit for partition and separate possession against the defendants contending that the suit property is the ancestral property of defendant No.1 to 8 and plaintiffs are having equal share in the suit property but defendant No.1 to 8 colluding with each other with intended to cause loss to the right of the plaintiff created false genealogy tree and got changed the khata of the of the suit property in to their names with intend to get the compensation amount form the National High Way Authority and to cause loss to the right of the plaintiffs over the compensation amount. As such the plaintiffs on 12.1.2017 got issued legal notice to the defendant No.9 and requested not to disburse the compensation amount in favour of defendant No.1 to 8 and said notice is served to the defendant No.9. Hence, plaintiff filed the suit for partition in respect of the suit property.

8. On perusal of the documents produced by the plaintiff in respect of suit property and their school records it prima facie shows that suit property is the joint family property standing jointly in the name of defendants and on perusal of the xerox copy of family tree made before Notary it discloses that, the name of the plaintiff is shown as legal heir of deceased Anil and study certificates shows that, plaintiff No.4 father name is Anil. And plaintiff has to prove their case by oral and documentary evidence to show that, plaintiff No.1 is the wife of deceased Anil and plaintiff No.2 to 4 are children of deceased Anil and they are joint family members of the defendant's family and they are having share in the suit property. It shall be determined by the Court after full pledged trial. And no preventive order is passed against the defendant No.9 restraining the defendant No.9 from performing any functions and act in the land acquired for extension of National High Way passing through suit property but passed an order restraining the defendant No.1 to 8 for alienating the suit property and restraining the defendant No.9 in payment of land acquisition compensation amount in favour of defendant No.1 to 8. Hence it is just and necessary to allow the plaintiffs to proceed with the matter to arrive at a proper conclusion of the case and to avoid multiplicity of proceedings it is necessary to permit the plaintiffs to continue the suit if the plaintiffs fail to prove the case. And defendants prove their

defence they have got every power to get compensation or cost from the plaintiffs with due process of law. Therefore the applicant has not made out valid grounds to reject the plaint as prayed in the application. Accordingly Point No.1 is held in the **Negative** and proceed to pass the following:

ORDER

**I.A.No.IX filed by the defendant No.9
under Order 7 Rule 11(d) of CPC is hereby
rejected.**

There is no order as to cost.

(Dictated to Stenographer directly on computer, after corrections pronounced by me in the open court on 2nd day of December 2019)

(Nagesh Patil)
Civil Judge and J.M.F.C.,
Sakaleshpura.