

ORDERS ON IA NO.13 FILED U/S 151 OF CPC

The learned Counsel for the defendants No.1 to 3 and 13 filed this application to register separate Civil Miscellaneous in respect of I A No.6 for the reasons stated in the accompanying of memo of facts. The learned Counsel for the said defendants, submitted memo of facts stating that the plaintiff has filed IA No.6 for violation of interim order passed against the defendant No.13. The disobedience of Court order, is in the nature of criminal proceedings. The relief sought in the I A No.6 is no way connected to the relief sought in the suit. If IA No.6 is continued in this case it may take time to dispose off because either of the party prefers appeal. Hence, prayed to register the separate Civil Miscellaneous case in respect of IA No.6 filed by the plaintiff against the defendant No.13.

2. Plaintiff has opposed the application by filing the objection statement. The relief sought in this case application is opposed to the law and not maintainable. Plaintiff examined himself in IA No.6 and also cross-examined. On 28.08.2014 defendant No.13 adduced evidence on IA No.6. Even after taking number of

adjournments he did not turn up for cross-examination therefore on 11.10.2017 the evidence of said defendant No.13 has been discarded. The present application is filed only to drag the proceedings. Hence, prayed to dismiss the application with cost.

3. Heard arguments and perused the material placed on record.

4. From the above said facts, points arise for my considerations are:-

1. Whether the defendants No.1 to 3 and 13 have made out sufficient grounds to register separate Civil Miscellaneous in respect of IA No.6 filed u/o 39 Rule 2-A R/w Sec.151 of CPC as prayed in I A No.13?

2. What order?

5. My answer to the above points are as under:-

Point No.1: *In the affirmative*

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

R E A S O N S

6. **Point No.1:-** At the outset, it is necessary to note that the plaintiff has filed the suit against the defendants for the relief of partition and separate possession on 24.04.2009. The learned Counsel for the plaintiff has filed IA No.6 u/o 39 Rule 2-A R/w

Sec.151 of CPC for violation of order dated 25.04.2009. Since then the case is adjourned one reason or other in connection with IA No.6.

7. Both side submitted arguments in accordance with the contentions taken in the application and in objection statement respectively. In support of his argument, the learned Counsel for the defendants No.1 to 3 and 13 placed reliance on the following Judgments:

- 1. The Hon'ble H C of Karnataka, Bangalore passed in W P No.14309/2013 (GM-CPC) (Gopinath Krishnan and Smt. Siddagangamma)*
- 2. 2007 (4) MhLj 213 (Rampyaribai Wd/O Sukhdeo Daga And.....Vs Niladevi Wd/O Narayandas)*
- 3. AIR 1998 Allahabad 228 (Gyan Chand Jain and others vs. XIIIth Addl. Dist. And Sessions Judge, Agra and others)*
- 4. AIR 2018 (NOC) 532 (KER.) (Madavana Masjidul Badariya Jamaath and another v. Seethi K.A. and others)*

8. I have gone through the judgments relied upon by the learned Counsel for the defendants No.1 to 3 and 13 and kept in mind, the views taken in the said citations while appreciating the evidence on record and coming to the final conclusion.

9. As noted supra, plaintiff has fled this suit against the defendants for the relief of partition and separate possession in the year 2009 and IA No.6 filed for breach of injunction order in the month of June 2011. The matter is adjourned one reason or the other in connection with IA No.6. In other words, more than 8 years have been lapsed only to hear IA No.6.

10. It is necessary to note that the proceedings for breach of injunction order is in the nature of criminal proceedings as the person against whom such proceeding is initiated is liable to be detained in prison if it is found that he has committed breach of injunction order. Since a punishment is imposed and a person is sent to jail, the principles on which these proceedings are decided are entirely different. To decide the fact principle of criminal law will apply. The result of I A No.6 has absolutely nothing to do with the decision of the suit on merits. As the IA No.6 is pending even after lapse of about 10 years from the date of filing of the suit so for evidence on merits is not yet commenced.

11. The relief sought in IA No.6 is concerned only to plaintiff and defendant No.13. Defendant No.1 to 12

are nothing to do with the said I A.

12. In 2nd, 3rd and 4th judgments referred above has held that a common Judgment and order deciding the main suit as well as application u/o 39 Rule 2-A of CPC is not proper and both should be decided separately.

13. The plaintiff has filed suit against the defendant No.13 for the relief of partition and separate possession and filed I A No.6 against defendant No.13 to initiate the proceedings on the ground of disobedience Court order. As noted supra defendant No.1 to 12 are nothing to do with the said I A. No.6. Because of pendency of said IA No.6 no fault of them defendant No.1 to 12 are sufferers.

14. Having regards to the facts and circumstances of the case and the views taken in the judgments relied by the defendants above, in the considered opinion of this Court if the separate Civil Miscellaneous registered in respect of I A No.6, it would helpful to the parties to the suit to decide the case merits in accordance with law as prayed in this application. At the same time in the opinion of this Court if enquiry on IA No.6 is conducted by registering separate Civil Miscellaneous, no right of the plaintiff would infringe. Even no

prejudice would cause to the plaintiff. On the contrary it would be easy to dispose of I A No.13 by hearing plaintiff and defendant No.13 who are party to the said proceedings. For the foregoing reasons I find force in the arguments of learned Counsel for the defendants. Accordingly, I answer point No.1 in the affirmative.

15. **Point No.2:-** For the foregoing reasons stated above, I proceed to pass the following:

O R D E R

IA No.13 filed by the defendants No.1 to 3 and 13 is hereby allowed. No order as to cost.

Office is hereby directed to separate the I A No.6 and register the same as Civil Miscellaneous. Further it is directed to keep the oral and documentary evidence adduced on I A No.6 along with Civil Miscellaneous case papers.

Call on the Civil Misc. case as well as this case on 07.06.2019.

Prl. Sr. Civil Judge & CJM,
Haveri.

