

ORDER ON IA No.I

The plaintiff has filed this application U/O.39 Rule 1 & 2 of Code of Civil Procedure for seeking grant of ex-parte ad-interim temporary injunction against the defendants, restrained them from removing the suit BECF road.

2. The plaintiff Veeranna S/o Channabasappa Bendigeri has sworn in an affidavit accompanying with IA No.I, wherein he stated that he is the owner of property bearing VPC No.83 measuring East-West 22 ft, North-South 140 ft as shown in the hand sketch map as ABCD, on the northern side of his property there is road as shown in the BEFC. But the defendants colluding each other by creating false khata extract of property in the name of defendant No.3 to the suit road and tried to remove the suit road. Hence, he prayed to grant TI against defendants.

3. The defendants appeared through their counsel inspite of sufficient opportunity has been given not filed objection to IA No.I and not filed written statement.

4. Heard plaintiff counsel and perused the materials on record.

5. As per the documents produced by the defendants the suit BEFC road is existed on the northern side of his property. Before filing of this suit he had issued notice under Sec.80(1) of CPC to the defendant No.1 and 2. The

said provision is not applicable to Panchayath officers. The plaintiff ought to have issued notice under the provision of the Panchayath Raj Act, issued notice under the provision of CPC. However it is mere injunction suit, therefore issuance of mandatory notice for injunction suit is exemption under Sec.284(4) of Panchayath Raj Act.

6. As per E-Swattu i.e., form No.9 of plaintiffs property on his northern side there is road. If remove the said road it will hardship to the plaintiff and caused loss and also public. The plaintiff has liberty to protect his property as well as public property. At this stage plaintiff has made out prima-facie case. The balance of convenience lies towards plaintiff. Hence, I proceed to pass the following,

ORDER

The defendant No.1 to 3 are hereby restrained from removing the suit BEFC road as shown in the hand sketch map till further orders.

For plaintiff evidence.

Call on

CJ & JMFC., Savanur.

ORDER ON IA NO.II

The applicant has filed this 3rd party application under order 1 Rule 10 (2) of CPC.

2. The applicant by name Lakshnavva Veerappa Talavar has sworn in an affidavit accompanying with IA No.II, wherein she stated that the plaintiff has filed this suit for partition and separate possession in respect of suit property. Propositus Fakkirappa S/o Udachappa Talavar who died on 20.11.2006 and his wife who died on 06.03.2009 had 6 daughters and 3 sons. She is also one of the daughter of said Fakkirappa. Therefore, she also having share in the suit property. Hence, she is necessary party to the suit. Therefore she prays to allow the IA.

3. Even sufficient opportunity had been given the plaintiff not filed any objection to IA No.II.

4. Plaintiffs have filed this suit for partition and separate possession. This applicant has been claiming that she is also one of the daughter of Fakkirappa Talavar and having

share in the suit schedule property. The plaintiff not denied the relationship with applicant. IN the suit for partition and separate possession all the family members i.e., coparceners or legal heirs of the deceased shall made as a party to the suit. Otherwise suit will be dismissed for non impleading of necessary parties. If applicant able to prove her relationship with plaintiffs and defendants, then she will be also having share in the suit schedule property. Therefore, she is necessary party to the suit. Otherwise court could not pass effective decree. Hence, I proceed to pass the following,

ORDER

IA No.2 filed by 3rd party applicant under order 1 Rule 10 (2) of CPC is hereby allowed.

Plaintiff is directed to amend the plaint within stipulated period.

If plaintiff failed to amend the plaint, CMO is hereby directed to amend the plaint by impleading applicant as defendant No.2.

For carry out amendment and amended plaint.

Call on 30.08.2022.

CJ & JMFC., Savanur.

