

ORDERS ON IA No.17

This is an application filed Under Order 32 Rule 12(2) r/w Sec.151 of CPC by the counsel for applicant/plaintiff No.2 seeking for discharge the guardian of minor defendant No.3(a) and 3(b), who is the defendant No.3, the minor defendant No.3(a) and 3(b) are attained majority and for leave to proceed in their own name which is quite essential and necessary, in the interest of justice and equity.

2. The application is supported with the affidavit of the applicant, wherein he has stated that he and other plaintiffs have filed the present suit against the defendants for the relief of partition and separate possession over the suit schedule properties. At the time of filing the suit the defendant No.3(a) and (b) are minors. Hence, he was filed an application for appointment of natural guardian mother i.e., the defendant No.3 to protect the rights and interest of minors. Now, the defendant No.3(a) and (b) are attained the age of majority i.e., 29 and 27 years respectively. Hence, he has filed the present application to discharge of natural guardian mother defendant No.3. If the application is not allowed, he will be put to much hardship and injustice. On the other hand, if the application is allowed, no hardship or injustice will be caused to the defendants. Hence, it is prayed to allow the application.

3. It is to be noted that the counsel for the defendants submitted that he has no objection to allow I.A.No.17 if the plaintiffs have furnished supporting documents.

4. Heard, perused the documents on record. The present case was filed by the plaintiffs against the defendants seeking for the relief of partition and separate possession and the same was disposed off. Aggrieved the said order, the defendants preferred R.A.No.29/2014 before the Appellate Court and the same was allowed on 14.09.2015.

5. It is to be noted that as per **Order 32 Rule 9(2) of CPC** reads as follows:-

“(2) where the next friend is not a guardian appointed or declared by an authority competent in this behalf, and an application is made by a guardian so appointed or declared, who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor, and shall thereupon appoint the applicant to be next friend in his place upon such terms as to the costs already incurred in the suit as it thinks fit”.

Further, Order 32 Rule 12(2) reads as follows:-

“Course to be followed by minor plaintiff or applicant on attaining majority.

(2) Where he elects to proceed with the suit or application, he shall apply for an order discharging the next friend and for leave to proceed in his own name”.

6. The scope of the said provisions is very clear that once the person attained majority if he desires to proceed further then the Court has to consider the same and if any party informs that the minor parties are attained majority, the Court has to consider the same. It is settle principle of law that the natural guardian is appointing for the welfare of the minor as they are not understanding the seriousness of the case. The record shows that this case filed on 03.05.2008. Meantime, the amendment carried out as per the Order dtd:26.08.2016, wherein the age of defendant No.3(a) and (b) mentioned as 17 and 15 years respectively. The said aspect not disputed by the defendants. Hence, keeping the mother of the defendant No.3(a) and (b) is a futile exercise. Hence, it is appropriate to discharge the natural guardian of defendants No.3(a) and (b).

7. On considering the scope of said provision, I am of the view that the contention of the plaintiff is sustainable one. Hence, I proceed to pass the following:-

ORDER

***The application filed by the plaintiff
under Order 32 Rule 12(2) r/w Sec.151***

of CPC as I.A.No.17 is hereby allowed with the cost of Rs.100/-.

The plaintiff is hereby permitted to delete the natural guardian of defendant No.3(a) and (b).

Call on for amendment and to submit the amended plaint by:-

***Prl. Civil Judge and JMFC.,
Malavalli.***