

16 / 06 / 2020

Petitioner by - **STS**
Res. No.1(a) to (g) by - **SPK**
Res. No.2 to 15 - **Exparte.**

for Orders on I.A.No.3

Orders on IA.No.3

The respondent No.6 and 7 filed I.A.No.3 U/o 9 Rule 7 R/w 151 of C.P.C. and prays to set aside the exparte order passed against them.

2. The application is support by an affidavit sworn to by the respondent No.6 by name Mayanna.

3. On the contrary the learned advocate for petitioners filed objections and prays to dismiss the application.

4. Heard, perused the materials placed on record.

5. The following points arise for my consideration:

1) Whether the I.A.No.3 filed U/o 9 Rule 7 R/w 151 of C.P.C. for setting aside the exparte order is deserves to be allowed ?

2) What order ?

6. My answers to the above points are as follows:

Point No.1 : As affirmative.

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

REASONS

7. **Point No.1** :- The learned advocate for respondent No.6 and 7 contended that on 02.01.2019 who was shocked to receive the notice from City Survey, Mysuru to measure the properties bearing Sy.No.158/2 and Sy.No.149 situated at Sarkari Uthanahalli, Varuna Hobli, Mysuru Taluk. The said property belongs to respondent No.6 under unregistered Partition Deed dated 22.11.2007. But, the petitioners and others who are cousins of my father have already taken their share and they filed the suit and obtained a decree and filed the present final decree proceedings. The respondent No.6 and 7 have not received any summons in OS.29/2014 nor in FDP.6/2018. Hence prays to set-aside the exparte order. If the application is not allowed, the respondent No.6 and 7 will be put to irreparable loss and injury and on the other hand if the application is allowed no hardship will be caused to other side. Hence prays to allow the application.

8. On the other hand the learned advocate for petitioners filed objection contended that the application is not maintainable either in law or on fact and the same is dismissed in limine. The respondents have sworn to false affidavit. The summons by this court has been served in OS.29/2014 and in FDP.6/2018 on the respondent No.6 and 7. The respondent No.6 and 7 have also engaged advocate in OS.29/2014 but they have not opted to defend their case. The present

application filed only to protract the proceedings and to harass the petitioners from getting the fruits of the decree. If the plaintiff is allowed the petitioners will be put to irreparable loss and injury and on the other hand no hardship will be caused to other side if the application is dismissed. Hence, prays to dismiss the application.

9. It is pertinent to note that it is the specific contention of respondent No.6 and 7 that the summons by this court is not duly served on them and they came to know about the present proceedings only when the surveyor issued notices to measure the properties which cannot be believable at this juncture. But, in the interest of natural justice an opportunity shall be given to the respondent to contest the proceedings, the hardship that would be caused to the petitioners can be met by imposing costs. Hence, I answer Point No.1 as affirmative.

10. Point No.2 :- In view of my findings of point No.1 as affirmative, I proceed to pass the following:

ORDER

The I.A.No.3 filed U/o 9 Rule 7 R/w 151 of C.P.C. by the respondent No.6 and 7 is hereby allowed on payment of cost of Rs.500/-.

Call on

**Sd/-
JUDGE,
Addl. Court of Small Causes,
MYSURU.**