

ORDER ON IA No.9

Sri SAN advocate for D.No.3 filed IA No.9 U/o 14 rule 5 R/w Sec 151 of CPC and prays to frame additional issue as proposed in the application.

The application is supported by an affidavit sworn to by D.No.3 P. Shivakumar.

On the other hand learned advocate for plaintiff filed objections and prays to dismiss the application.

Heard and perused the materials placed on record.

The following points arise for my consideration

Point No.1 – Whether the proposed issue is necessary to adjudicate the matter as such, the application deserves to be allowed?

Point No.2 – What order?

My answers to above points are as follows:

Point No.1: In the negative

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

REASONS

Point No.1: The learned advocate for D.No.3 prays to frame additional issue as under:

Whether the defendants prove that the suit is liable to be dismissed for reasons put forth in Para No.26 of Amended Written Statement?

The learned advocate for D.No.3 contended that in view of the amendment the additional issue will arise. The proposed issue is very much necessary to put forth in the form of additional defense matrix. In para No.26 of written statement it is comprised vital and materials facts. The said materials facts deserves to be transformed into an issue casting burden of proof on Defendants. The additional issue is absolutely essential and necessary to delve with the original suit embarking the relief of specific performance of alleged contract. The proposed issue is well oriented and provided greater assistance for complete and effective adjudication of questions involved. The additional issue demonstrated in the application is essential to evaluate and decide whether to entertain or reject the relief of alleged contract. Hence,

prays to allow the application as prayed for.

On the other hand the learned advocate for plaintiff contended that the application filed by the defendants is mis-conceived and is not maintainable either in law or on facts. The suit of the plaintiff is for the relief of specific performance of agreement of sale and the defendants have already taken the contention that their signature were taken on blank stamp papers. On the basis of the pleadings, necessary issues have already been framed and therefore there is no necessity to frame additional issues. The application filed by the defendants is to drag the proceedings. Hence, prays to dismiss the application.

It is pertinent to note that in Para No.26 of Written statement the defendants taken contention that daughters of D.No.1 and 2 who happens to be co-owners of land bearing Sy.No.69/1 comprising 32 guntas of Chikkahalli, Mysuru taluk have not affixed their signatures on blank stamp papers as well as other papers which have been fabricated, doctored and concocted as alleged agreement to sell dated 01.07.2005. Such being the case, the suit of the plaintiff embarking on dubious alleged

agreement to sell dated 01.07.2005 is persy vexatious and deserves rejection on the said count alone.

It is significant to note that this court already framed issues No.1 on 19.07.2019 as under:

Whether the plaintiff proves that Defendants agreed to sell the suit schedule property to plaintiff for sale consideration of Rs.3,28,000/- and executed an agreement of sale on 01.07.2005 by receiving earnest money of Rs.1,00,000/- and further plaintiff agreed to receive balance sale consideration amount of Rs.2,28,000/- on the date of registration sale deed?

This court also framed Issue No.4 on the same date as under:

Whether the plaintiff is entitled for enforcement specific performance of contract as sought for?

It is significant to note that Issue No.1 and 4 covers the proposed issue which is sought to be framed. As such, there is no need to frame additional issue as proposed in the application as the same is covered in Issue No.1 and 4

which were already framed for better adjudication of the dispute between the parties. Hence, I answer Point No.1 in the Negative.

Point No.2: In view of my findings on Point No.1 in the negative, I proceed to pass the following:

ORDER

The IA No.9 filed by the defendant No.3 U/o 14 rule 5 R/w Sec 151 of CPC is dismissed without costs.

Call on 29/01/2020

Sd/- 22/01/2020

Judge,  
Addl. Small Causes,  
Mysuru.