

Order on I. A.No.XV & XVII

The application I.A.No.XV is filed by the plaintiff U/O 1 Rule 10(2) of CPC to implead the opponents as proposed defendant No.13 to the present suit and I.A.No.XVII is filed by the proposed defendants No.14 and 15 to implead them as parties to the suit.

2. The application I.A.No.XV is supported by affidavit of plaintiff No.1(b) and it is sworn that the defendant No.1 to 3 and husband of defendant No.4 had sold 2nd item of the suit schedule property on 14.12.2012 in favour of proposed defendant No.13 and the Sale Deed executed in his favour is marked as Ex.D33 to Ex.D36. It is further sworn that the plaintiffs are not aware about the said Sale Deeds and the said documents are not binding on the share of the plaintiffs. It is further sworn that the proposed defendant is a necessary party to the suit and prayed to allow the application.

3. The application I.A.No.XVII is supported by affidavit of proposed defendant No.14 and it is sworn that he himself and his mother have filed a suit for declaration in O.S.No.25/2016 in respect of present item No.6 of schedule property against the plaintiff and other defendants. It is further sworn that the proposed defendants are not aware about the filing of present suit and recently during cross-examination of PW-1 in O.S.No.25/2016, they came to know about the filing of present suit. It is further sworn that the item No.6 of suit schedule property exclusively belonged to the present proposed

defendants and therefore they are necessary parties to the suit. Hence prayed to allow the application.

4. Heard the arguments of counsel for both parties.

5. The points that arise for consideration of this court are as under;

P O I N T S

Point No.1. Whether the plaintiff has made out sufficient grounds to implead the opponent of I.A.No.XV as necessary party and similarly the proposed defendant No.14 and 15 have established that they are the necessary parties to the suit as claimed in I.A.No.XVII?

Point No.2. What order?

6. The findings of this court on above points are as under:

Point No.1 :-In Affirmative

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

R E A S O N S

Point No.1:

7. The plaintiffs have filed I.A.No.XV to implead the opponent as proposed defendant No.13 to the present suit. It is stated in the affidavit accompany to the application that the proposed defendant No.13 is purchaser of item No.2 of schedule property from defendant No.1 to 3. The defendants have got marked said Sale Deeds as Ex.D33 to Ex.D36. On perusal of the said documents, the alleged Sale Deed was took place prior to the filing of suit. The plaintiffs have filed present suit for partition and separate possession and since the alienation was took place prior to filing of present suit, the purchaser who is

proposed defendant No.13 is a necessary party to the suit. Therefore by considering the reasons stated in the application the opponent of I.A.No.XV should be impleaded as defendant No.13 to the present suit.

8. The proposed defendant No.14 and 15 have filed I.A.No.XVII to implead them as parties to the suit. It is sworn in the affidavit accompanying to the application that they have filed a suit in O.S.No.25/2016 and during cross-examination in the said suit, they came to know about the filing of present suit. It is also sworn that the item No.6 of schedule property exclusively belong to them and therefore they are necessary parties to the suit. The proposed defendants along with application have produced the copy of Sale Deed dated 30.08.1955 and on perusal of said Sale Deed, the father of the proposed defendant No.14 by name Shivegowda along with other purchasers have purchased the property bearing Sy.No.16. By considering the said document, in order determine the right of proposed defendants in respect of item No.6 of schedule property, their presence is required and they are necessary parties to the suit. Hence by considering the reasons stated in affidavit accompany to said application the proposed defendants No.14 and 15 are also necessary parties to the suit. Hence for the said reasons, this court answers Point No.1 in Affirmative.

Point No 2:

9. For the reasons discussed above, this court proceeds to pass the following:

ORDER

The application I.A.No.XV filed by the plaintiff U/O 1 Rule 10(2) of CPC and I.A.No.XVII filed by the proposed defendants No.14 and 15 U/O 1 Rule 10(2) of CPC are hereby allowed.

The plaintiffs are hereby directed to implead the proposed defendants as defendant No.13 to 15 and carry out necessary amendment.

For amendment and amended plaint.

Call on : 21.10.2024.

(Dictated to the Stenographer, transcribed by him on computer, revised, corrected and then pronounced by me in the open Court on this the 23rd day of September, 2024)

**(Sandesh Prabhu. B)
Senior Civil Judge & J.M.F.C
H.D.Kote**