

ORDER ON I.A.I & II

The suit is filed for partition and separate possession against the defendants. The 2nd and 3rd defendants are authorities i.e., the Spl. Land Acquisition Officer and the Managing Director, K.I.A.D.B., Mysuru. I.A.I is filed by the 2nd plaintiff under Section 80(2) C.P.C. to permit the plaintiff to file suit against the defendants 2 and 3 by dispensing with the issuance of mandatory notice of 60 days, mentioning that suppose plaintiff is not exempted to comply the mandatory provision of Section 80 C.P.C. it would defeat the right of suit because he has to wait up to 60 days from the date of issuance of notice if any. Hence, prays to allow the application.

Heard the plaintiffs' side. The suit is filed for partition and separate possession filed against the defendants. Out of them defendants 2 and 3 are Government authorities. The plaintiff seeks exemption to follow mandatory provision. Section 80 C.P.C. means issuance of prior notice. According to Section 80 C.P.C. if any person wishes to file suit against the Government has to issue prior notice and he need to wait up to 60 days for reply of such defendants, otherwise if any suit is filed without

comply Section 80 C.P.C. it is not maintainable. However, such suit can be filed against the Government authority without issuing notice by taking permission of jurisdictional court. Here in this suit, the plaintiff says that defendants No.2 and 3 colluded with 1st defendant and making attempt to disburse the compensation amount. Suppose compensation amount granted for acquisition of property is disbursed, nothing will available to the plaintiffs to contest the suit. Therefore, the plaintiffs are permitted to file the suit by exempting mandatory issuance of notice under Section 80 of C.P.C.

In I.A.II the learned counsel for the plaintiffs prayed to grant ad-interim exparte order, restraining the 1st defendant or his agent or servant or anybody acting on his behalf from receiving compensation of 1/6th share of each plaintiffs from the hands of defendants 2 and 3 in respect of item No.1 of schedule property. It is further contended that, the 1st defendant making hectic attempt to receive the compensation amount from the defendants 2 and 3. Suppose compensation amount is received by the 1st defendant, no subject matter will survive to contest the suit for the plaintiffs. Therefore, it is better to direct the 1st defendant or his any authorized person not to receive any compensation amount till next date of hearing.

But it is made clear that the said order shall not effect to the defendants 2 and 3, because ad-interim exparte injunction shall not be issued against the Government without giving hearing opportunity to them. Therefore the following:

ORDER

Issue ad-interim order against the 1st defendant preventing him to receive compensation amount of 1/6th share of each plaintiffs till next date of hearing, if the plaintiffs complied the Order XXXIX rule 3(a) of CPC.

Issue suit summons to all the defendants and notice of IA No.II to the defendant No.1, if PF is paid.

Call on2024.

Senior C.J. & JMFC.,
Nanjangud.

10.07.2024