

Orders on I.A.No.V

The plaintiffs have filed I.A.No.V u/Order I Rule 10 of C.P.C and prayed to implead proposed defendants as defendant No.4 to 6 in the suit.

2. Plaintiff No.3 in support of their application sworn to an affidavit stating that, the plaintiffs have filed the present suit against the defendants for the relief of partition and separate possession. The proposed defendants intending to encroach the schedule property and also, they are intending to remove the tamarind tree, aged 25 years old. If the proposed defendants succeed in their attempt of cut and remove the tamarind tree, then the plaintiffs will be put to great hardship and injury. Hence, the proposed defendants are necessary parties to the suit.

3. In response to the notice on I.A. No.V, the proposed defendants appeared before this court through their pleader and filed objections to the instant application. The proposed defendants in their objections contended that, the application is not maintainable either in law or on facts. The proposed defendants are having landed property in Sy.No.102/3 towards western side of suit item No.1. The father of the plaintiffs had already sold suit item No.1 to defendant No.2. The land holder in Sy.No.100 has encroached 3 ½ guntas of land of proposed defendants' in Sy.No.102/3. The said fact came to the knowledge of proposed defendants after the measurement of their land by land surveyor. The plaintiffs have filed the present application in order to harass the proposed defendants. The proposed defendants never encroached any portion of suit item No.1 or they tried to cut any trees in suit item No.1. Apart from that, defendant No.2 has encroached portion of land of proposed defendants. Accordingly, the proposed defendants prayed to dismiss the application with costs.

4. Heard learned counsel for plaintiffs and learned counsel for proposed defendants. Perused the entire materials available on record.

5. The following points arise for my consideration:

1. Whether the presence of the proposed defendants are necessary in order to adjudicate all the questions involved in the suit effectively and completely?

2. What order?

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

Point No.1: In the Negative.

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

REASONS

7. **Point No.1:** The plaintiffs have filed the present suit against the defendants for the relief of partition and separate possession in respect of suit item No.1 and 2. The plaintiffs in their application stated that, the proposed defendants are intending to encroach the suit schedule property and cut & remove the tamarind tree, aged about 25 years old.

8. As I said earlier, this suit comprised of 2 items of landed properties. The affidavit in support of I.A.No.V is very bald. The plaintiffs either in their application or in their affidavit did not state in which suit item, the proposed defendants are trying to encroach the property or cut down the tamarind tree. The proposed defendants in their objections stated that, they are having landed property bearing Sy.No.102/3 towards western side of suit item No.1. It is their further contention that, the father of the plaintiffs had already sold suit item No.1 to defendant No.2 and the said defendant No.2 has encroached 3 ½ guntas of land in their survey number.

9. The present suit is for partition and separate possession. The plaint averments disclose that, defendant No.1 for himself and on behalf of the then minor defendant No.3 sold item No.1 to defendant No.2 on 20.03.2000. The application and affidavit of plaintiffs is not certain in which suit item, the proposed defendants are trying to encroach the suit property and cut down the tamarind tree. In a suit for partition, if the neighbour of suit schedule property is added on the premise that, he intends to encroach the suit property or cut down the tamarind tree, certainly, the nature of the suit will be radically changed. Learned counsel for proposed defendants rightly argued that,

the proposed defendants are neither necessary nor proper parties to the suit as no relief is claimed against them in the suit.

10. In *Sharja Nice Bakery Vs. Superintendent and Chairman, Tender Committee, Karnataka Medical College Hospital* reported in *AIR 1992 Kar 391* in para No.8 it is held that,

8. This Court has considered the scope of Order 1, Rule 10(2) C.P.C. in *Anbeline Bai v. Mrs. Roslie G. Castelino*, 1967 (2) My LJ 365 and has held that if the relief or reliefs prayed for by the plaintiff if given, do not affect the person sought to be added as a party insofar as the subject matter of the suit or any right thereto is concerned, then it would not be necessary to add him as a party to the suit and that the words "the questions involved in the suit" in Order 1, Rule 10 C.P.C. have reference only to such question as may arise in the suit in order to give reliefs sought for by him and they have no reference to the pleas relied by him.

In the above decision, Hon'ble High Court of Karnataka held that, if the relief or reliefs prayed for by the plaintiff if given, do not affect the person sought to be added as a party insofar as the subject matter of the suit or any right thereto is concerned, then it would not be necessary to add him as a party to the suit. The instant suit is for partition. If the relief prayed for by the plaintiffs is given, it will not affect the proposed defendants. Hence, the proposed defendants are not necessary or proper parties to the suit. Apart from that, in a suit for partition, if the neighbour of suit property is added on the premise that, he intends to encroach the suit property or etc., certainly, the nature of suit will be changed. Hence, the application filed by the plaintiffs deserves to be dismissed. Accordingly, I answer Point No.1 in the '**Negative**'.

11. **Point No.2:** For the foregoing reasons, I proceed to pass the following.....

ORDER

I.A.No.V filed by the plaintiffs/applicants
u/Order I Rule 10 of C.P.C. is hereby **dismissed**.

No order as to cost.

I Addl. Civil Judge & JMFC.,
Nanjangudu