

Orders on I.A.No.V

The plaintiff has filed I.A.No.V u/Order XXIII Rule 1 R/w/Section 151 of C.P.C. seeking permission to withdraw the suit with liberty to file fresh suit on the same cause of action.

The plaintiff in support of his application sworn to an affidavit stating that, 6th defendant, who is purchaser of one of the suit property, is reported to be sold to some other person. The detail of the purchaser is yet to be traced. It requires some more time. Hence, he prays for permission to withdraw the suit with liberty to file fresh suit on same cause of action.

Per contra, defendant No.1 has filed objections to I.A.No.V contending that, defendant No.1 and his 4 brothers effected the partition on 02.04.1980 in respect of suit property. Ever since from the date of partition, defendant No.1 is in possession and enjoyment of the suit property. Neither the plaintiff nor remaining defendants have no rights, title or interest whatsoever over the suit properties. Defendant No.1 further contends that, the suit schedule property is his self-acquired property and he is kartha and absolute owner in possession of the suit property. Defendant No.1 further contends that, there is no valid reason to allow the application and until survival of defendant No.1, the plaintiff cannot claim any share over the suit properties. On all these grounds defendant No.1 prays for dismissal of the application.

Heard and perused.

The present suit is for partition and separate possession. The plaintiff seeking permission to withdraw the suit with liberty to file fresh suit on the same cause of action. In order to grant permission to withdraw a suit with liberty to institute a fresh suit on the same subject-matter under Order 23, Rule 1(3), the Court must be satisfied

that a suit must fail by reason of some formal defect or there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, on such terms as it thinks fit. In this suit, the plaintiff in his application stated that, 6th defendant has sold property to some other person and a detail of purchaser is yet to be traced. It requires time. Hence, he seeks permission to withdraw the suit. The present suit is of the year 2015 and for partition and separate possession. Defendant No.2 and 3(a) by filing necessary application sought for transposition as plaintiffs to proceed with the suit. If really, defendant No.6 has sold property to some other person, the plaintiff can easily trace the details of person who purchased the property by obtaining encumbrance certificate. The ground urged by the plaintiff cannot be held that a formal defect and there is no sufficient ground for allowing the plaintiff to institute a fresh suit for the same subject matter. In toto, there is no valid ground to permit the plaintiff to withdraw the suit with liberty to file fresh suit on same cause of action. Hence, I.A.No.V filed by the plaintiff is deserves to be dismissed. Hence, I proceed to pass the following:-

:- O R D E R :-

I.A. No.V filed by the plaintiff u/Order 23 Rule 1
R/w/Section 151 of CPC is hereby dismissed with **cost**
of Rs.250/-.

I Addl. Civil Judge & JMFC.,
Nanjanagudu