

Order on I.A.No.III

The instant application is filed by the Respondent No.1 U/o IX Rule 7 of CPC with a prayer to set aside the exparte order passed against her and prayed to permit her to proceed with the case.

2. In support of the application, she has sworn to the affidavit contending that, she is not served with the summons of the proceeding and she got the information only when a notice was received from A.E.E., P.W.D., Periyapatna, the court commissioner and then she came to know about the fraud committed on her and on other respondents by the petitioner in not keeping her promise as per the mutual agreement and only with an intention to have wrongful gain and that, suppressing the materials facts has filed the petition after lapse of 4 years by obtaining exparte judgment and decree and thereby prayed to permit her to come on record by recalling the exparte order passed against her.

3. On the other hand, the petitioner has filed her objection contending that, the application is not maintainable either in law or on facts of the case and that the application is made only to harass her. She has contended that, inspite of summons served in the original suit she has purposefully failed to appear before the court and has failed to contest the case and thereby taking in to consideration of the case the court has decreed the suit and thereby prayed to dismiss the application.

4. Heard from bot side and perused the material available on the record. The following points that would arise for my consideration are:

1. Whether the respondent No.1 she has made out ground to allow the instant application as sought for?

2. What order?

5. My answers to the above points is as follows:

Point No.1: In the "Affirmative"

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

REASONS

6. Point No.1: It is pertinent to note that, the present petition is filed seeking a final decree by virtue of preliminary decree passed in O.S.No.135/2010. Admittedly the instant application is made by Sarojamma who is none other than the respondent No.1. Admittedly the suit being one for partition and separate possession and accordingly the suit is decreed. The petitioner has filed the present petition seeking to draw the final decree. No doubt the notice was served on the respondent through her son and accordingly taking in to consideration of the service been valid, she was placed absent. Now the respondent No.1 has come with the instant application contending that, she has good case on merits and she is seeking an opportunity to contest the case. Admittedly the present petition is one for drawing the final decree, an opportunity is required to be given to the respondent No.1 to contest the case. The reasons assigned by the respondent No.1 appears bonafide one. By allowing the application no hardship or prejudice will cause to the other side. Therefore taking in to consideration for the reasons discussed above, I answer Point No.1 in the "Affirmative"

8. Point No.2: In view of finding I proceed to pass the following:

ORDER

The I.A.No.III filed by the respondent No.1 U/o IX Rule 7 of CPC is hereby allowed on cost of Rs.250/-.

The exparte order passed against the respondent No.1 is recalled

For hearing on I.A.No.4 by.

(Dictated to the Stenographer, transcript, revised, corrected and then pronounced by me in the open court, this the 17th day of October, 2017)

(Jai Shankar.J)
Civil Judge and JMFC.,
Periyapatna.