

30.11.2020

Order on I. A. No.XV

1. That, the defendants No.1 to 9 have filed the application under Order XIII Rule 10(1) R/w Section 151 of Code of Civil Procedure, with a prayer to call the entire file in O.S. No. 35/2010 which was adjudicated and disposed by the Honble I Additional Senior Civil Judge, Raichur, dated:- 15.11.2011.

2. That, the defendant No.9 in his affidavit has sworn to the fact that the plaintiffs have filed the O.S. No. 35/2010 on the board of the said court for partition and and lateron, the said suit was dismissed as not pressed and the records pertaining to the said suit are very much necessary for fair adjudication of present matter. That, the defendant No.9 has further averred that if the entire records of the said case are called then no prejudice would be caused to other side.

3. That, refuting all contentions of the defendants the plaintiffs have filed their objections to said application and have specifically contented that in present case the defendants have not filed their written statement and the

defendants in their application have not explained how the alleged records of O.S. No. 35/2010 are relevant for the present case. That, the plaintiffs have further pleaded that the defendants have filed the present application only with an intention to prolong the proceedings on one or other false pretext and the said application is premature one and even the defendants have not made the attempt to produce the certified copies of alleged file and in view of the same, the present application is not maintainable and liable to be rejected.

4. That, I have heard the arguments and perused the materials placed on record. That, the following points arise for My consideration and determination:-

1. Whether the defendants have made out the grounds that, their said application is liable to be allowed ?
2. What order?

5. That, My answer to the aforesaid points are as under:-

Point No.1:- In the **NEGATIVE.**

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

REASONS

6. Point No.1:- That, as stated above the defendants have contended that the entire records of O.S. No. 35/2010 are very much necessary for fair adjudication of present matter and whereas, the plaintiffs have denied the said contentions.

7. It is significant to note here that, at this juncture I have gone through the provisions of Order XIII Rule 10 of the Code of Civil Procedure and which contemplates that:-

“10. Court may send for papers from its own records or from other Courts:-

(1) That Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

(2) Every application made under this rule shall (unless the Court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the

application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

(3) Nothing contained in this rule shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit."

It is pertinent to note here that, in their application the defendants have not explained that, though, they have made an attempt to get the alleged record but, have failed to obtain the same. That, the defendants in their said application have not explained how the alleged documents are relevant for present case. That, the defendants have not complied with the provisions of Sub-Rule(2) of Rule 10 of Order XIII of the Code of Civil Procedure. Hence, without much discussion, point No.1 is answered in the **NEGATIVE**.

8. Point No.2:- That, as discussed on point No.1, I proceed to pass the following:-

ORDER

That, the application filed by the defendants under Order XII Rule 10(1) R/w Section 151 of the Code of Civil Procedure, is hereby rejected.

That, no orders as to cost.

That, for P/evidence by 04-12-2020.

(Directly dictated to the typist and corrected by me and pronounced in the open Court on this the 30th day of November 2020)

(Hema Pastapur)
II Addl. Civil Sr. Civil Judge and JMFC,
Raichur.