

Order on I.A.No.5

The learned counsel for the Defendants No.1 to 5 has filed this application under Order IX Rule 7 R/w. Sec. 151 of the CPC., seeking to set aside the order of exparte passed against the Defendants No.1 to 5 and to permit them to contest the suit.

2. There is an affidavit accompanying the present application sworn by the Defendant No.2, in which she has sworn that the Plaintiff has filed this suit seeking the relief of declaration and permanent injunction and other reliefs. The reason assigned in the affidavit for the non-contest of the suit by them till date is due to their personal inconvenience. Therefore, their absence till date is for a bonafide reason and not intentional one. This matter relates to their right to immovable property and they have very good case on merits. Hence, on these among other grounds, they have prayed to allow the application.

3. It is seen that despite given sufficient opportunity, the Plaintiff has not filed his objections to the present application.

4. Heard the learned counsel for the Defendants No.1 to 5 and perused the records.

5. The order sheet reveals that this suit is filed by the Plaintiff for the relief of Declaration and consequential relief of permanent injunction. The order sheet further reveals that, on service of suit summons Sri.US, Advocate filed Vakalath for Defendant No.1 on 21-09-2021, while the Defendants No.2 to 5 remained absent despite of service of suit summons on them personally. Therefore, on 21-09-2021 they were placed exparte. However, the Defendants No.1 to 5 have now come up with the present application seeking to set aside the exparte order passed against them. Admittedly, the Plaintiff has not filed the objections to the present application.

6. It is a well settled position of law that, every lis is to be decided on merits. However, strictly speaking the application is liable to be rejected outrightly since there is no exparte order so far as the Defendant No.1 is concerned.

7. However it is a well established principle of law that, every suit has to be decided on merits. Otherwise, it may not give the ultimate justice to even the party who might have succeeded in the suit, when the matter is heard exparte. It may also give rise to multiplicity of proceedings and in such event it's again the Plaintiff/s who would be subjected to undue hardship and harassment. Therefore, in the interest of justice and to avoid multiplicity of proceedings, it is considered just and proper to allow the present application in so far as it relates to Defendants No.2 to 5 only, but subject to compensating the other side with costs. So far as the Defendant No.1 is concerned, since no written statement is filed on his behalf till date, written statement of Defendant No.1 taken as not filed. Hence, the following:-

ORDER

I.A.No.5 filed on behalf of the Defendants No.1 to 5 under Order IX Rule 7 of CPC is hereby allowed in so far as it relates to Defendants No.1 to 4 only on cost of Rs.300/- to the Plaintiff.

**Prl. Senior Civil Judge & CJM,
Ramanagara.**