

Order on I.A.No.7

The learned counsel for the Defendant No.1 and 2 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 Defendant No.1 and 2 and to permit them to contest the suit.

2. There is an affidavit accompanying the present application sworn by the Defendant No.1. The reason assigned in the affidavit for the non-contest of the suit by her and the 2nd Defendant till date is that she and her daughter i.e., the 2nd Defendant are residing in the address at Bengaluru. Hence summons was not served to her daughter from this court. Presently she came to know that she was placed exparte. They have good case on merits. Hence by allowing this application, no loss or hardship is going to be caused to the other side and by rejecting the same, they will be put to great loss and

hardship. Hence on these among other grounds, they have prayed to allow the application.2.00cm

3. Per contra, the counsel for the Plaintiff has filed his objections to the present application by opposing to allow the same on the ground that the same is not maintainable in law or on facts. That though the Defendant No.1 and 2 were served with notice through court, intentionally they have not received the same and already 7 years has lapsed since the filing of the suit. Hence, the present application is not maintainable. Accordingly, it is prayed to dismiss the application with costs.

4. Heard both the sides and perused the records.

5. The order sheet reveals that this suit is filed by the Plaintiff for the relief of Partition and Separate Possession. The order sheet reveals that, on 24-08-2021, the Defendants No.1 and 2 have been placed exparte. Thereafter on 10-08-2022, the Defendants No.1 and 2 got filed power on their behalf along the present application. Thereafter on 28-10-2022, NOC Vakalat came to be filed

only on behalf of Defendant No.1. That means the vakalat filed on behalf of Defendant No.2 by earlier counsel continues in respect of him. Therefore, considering the fact that as on the date of the filing of the present application, the Defendant No.1 and 2 were represented by the same counsel, there is no hindrance for this court to consider this applicaiton.

6. Now coming to the objections to the present application by the Plaintiff is concerned, no doubt there is delay on the part of the Defendants No.1 and 2 in appearing before this court. 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 even to the party, who might have succeeded in the suit, when the matter is heard exparte. Further, it may also give rise to multiplicity of proceedings and in such an event, it is 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, but subject to compensating the other side with costs. Hence, the following:-

ORDER

I.A.No.7 filed by the Defendant No.1 and 2 under Order IX Rule 7 of CPC is hereby allowed on cost of Rs. 500/-.

For W/s of Defendants No.1 and 2 by:-
07-01-2023.

18-11-2022

Prl. Senior Civil Judge & CJM,
Ramanagara.