

KAUK030009622022



Counsel for defendant has filed an application under Order VIII Rule 1(A) read with Section 151 of C.P.C. seeking for production of documents.

Plaintiffs choose not to file objections to the same.

Heard.

I have gone through the accompanying affidavit. Satisfied with the reasons mentioned therein. It appears that the documents which the defendant intends to produce are material to prove the defence taken by her. Moreover, Court cannot delve deep into and observe at this juncture whether the documents intend to produce by the parties are relevant to their case or not while assessing the application for production of documents. Hence the appln. filed by the C/D under Order VIII Rule 1(A)

read with Section 151 of C.P.C. is allowed. Accordingly, the documents are taken on record.

Addl. JMFC, Karwar.

ORDERS ON I.A.NO.IV

1. The counsel for defendant has moved this application by invoking the provisions of Order XIV Rule 1 and 5 of C.P.C seeking to frame additional issues.

2. In the memo of facts enclosed to the application it is stated that the plaintiffs have filed this suit for the relief of declaration and partition. Plaintiff No.2 and 3 had filed O.S.No.173/2016 for similar relief which came to be dismissed for default. Once again the plaintiffs have filed this suit for the similar relief. Such being the case provision of Order IX Rule 9 of C.P.C., suit is not maintainable . Though this contention was taken in para No.8 of W.S., issue in that regard was not framed. Hence defendant has moved this application.

3. On the other hand, counsel for plaintiff filed objections stating that instant application is quite contrary to law and the issues were framed by this Court on 09.01.2023 and after lapse of 10 months defendant has come up with this application for framing of additional issues. Hence the application is not maintainable. The reasons why the defendant did not bring the same to the notice of this Court at the earlier stage itself is not forthcoming. Hence he sought for dismissal of the application.

4. Heard both the sides. Perused the materials placed fore of this Court.

5. I have scrupulously gone through the pleadings of both the parties and the documents produced by the defendant. It can be seen that defendant has pleaded in para No.8 of her W.S. that plaintiffs had filed a suit earlier seeking the similar relief in O.S.No.173/2016. However they did not appear before the Court to adduce evidence for a quite long time. Thus the Court was pleased to dismiss the suit of the plaintiff noting their consistent absence before the Court. Further the plaintiffs have not taken any steps so as to restore the suit to its original file. Thus the present suit

seeking the similar relief is barred by the provisions of Order IX Rule 9 of C.P.C. Thus in this regard it is pertinent to refer to the provisions of Order IX Rule 9 of C.P.C. It says that “*where a suit is dismissed either in part, or, in whole, under Order IX, Rule 8 of the Code, then, a fresh suit on the same cause of action is barred.*” Order IX Rule 8 says that “*Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.*” In corroboration of her contention, defendant has also produced the CC of the plaint, written statement and order sheet in O.S.No.173/2016. Upon perusal of the records it is seen that parties to the suit are same and relief claimed in both the suits are also the same. Hence this Court opines that it is just and necessary to frame the issue in this regard. Further the defendant has also to frame an issue with regard to the payment of court fee. Though the plaintiffs have claimed distinct reliefs it prima facie appears that they have not paid the sufficient/required

court fee as per the provisions of KCF & SV Act. In light of the same, this Court intends to frame the additional issues as follows;

- 1. Whether the suit is maintainable as per the provisions of Order IX Rule 9 of C.P.C. in view of the dismissal of earlier suit filed by the plaintiffs herein in O.S.No.173/2016?*
- 2. Whether the plaintiffs have paid the proper Court fee or not?*

For the foregoing reasons and discussion this Court proceeds to pass the following.

ORDER

The application filed by the defendant under Order XIV Rule 1 and 5 of C.P.C. is hereby allowed.

Accordingly, additional issues are framed.

Call on 19.07.2024.

**Addl. Civil Judge & JMFC-II,
Karwar.**