

12-08-2024

ORDER ON MEMO

A memo was filed by the petitioner, respondents No.1, 2, 4 to 6 stating that they have joined hands with each other and claim their share in the property and agreed for the partition of the property and for allotment of shares and also have furnished hand written sketch and have divided the properties into two shares, where the five sharers sought to allot one plot and another one plot for the respondent No.3 who did not join his hands.

Counsel for the respondent No.3 filed objection to the said memo by stating that there is no consent for the said sketch and the memo filed by the other parties, and that they have

preferred an appeal against the preliminary decree in R.F.A.No. 1549/2022.

Immediately on 27-03-2024 the counsel for the petitioners filed memo stating that the said signature on the memo by the parties to the petition which is dated 27-09-2023 was filed by obtaining the signature of the defendant No.1 while he was in hospital. It is further stated in the memo that some of the respondents advised for the settlement and made her to sign the memorandum dated 27-09-2023 and by oversight the petitioner No.1 signed the memorandum and the sketch. Further submits that the petitioners are not agreeing for the settlement as per the sketch and memorandum dated 27-09-2023 and prays to reject the application.

Heard from the counsel for petitioners and respondents.

The following point arise for my determination.

“Whether memo filed by the parties needs to be accepted?”

My answer to the above point is in the negative, for the following-

REASONS

The present petitioner is filed s seeking final decree of the preliminary decree passed by this court. In the meantime, respondents No.2, 4 to 6 who are placed exparte , appeared before the court and got appointed one counsel. However , the counsel for the respondent No.2, 4 ,6 retired from the above case stating that the parties are not responding to the letters issued by him. In the meantime the respondents appeared before the court and filed a memo stating that they have compromised the matter, where signature of respondent No.3 was not found. However as per the preliminary decree, the respondent No.3 was allotted with 28 cents of land and the other parties

were allotted with particular share in the properties which is as per the compromise entered into. But the point to be noted was petitioner No.1 who was appearing through counsel, had also signed the memo and counsel for the petitioner sought for some time to compare as to whether the said memo and sketch were signed by petitioner No.1 or not. But however the counsel for the petitioners later submitted that the signature was obtained while petitioner No.1 was admitted to hospital and sought for orders.

Therefore at this stage when there is no consensus by the petitioners and respondents for division, the memo filed by the parties, where signature of respondent No.3 was not found and the petitioners and respondent No.3 have not consented for the said memo, the said memo needs to be rejected. Accordingly the above point is answered in negative.

Hence the following:-

ORDER

Memo filed by petitioners and respondents

No.1, 2, 4 to 6 is not accepted.

To hear on main petition

(Sharmila C.S.)

Senior Civil Judge & ACJM
Karkala.