

28-08-2024

ORDER ON MEMO

This order came to be pronounced in view of counsel for the petitioner filing process fee to issue notice to the respondents.

The counsel for the petitioner relies upon the circular of Hon'ble High Court of Karnataka dated 03-01-2024 which is based upon the authority of the Hon'ble Supreme Court of India in Shub Karan Bubna alias Shub Karan Prasad Bubna Vs. Sita Saran Bubna and others, (2009) 3 SCC 689. The Hon'ble High Court of Karnataka while discussing the concept of final decree, enlightened the above authority at page No.18.3. , has directed that once the preliminary decree is passed by the trial court, the court should proceed with the case for drawing of final decree suo moto , there is no need to file a separate final decree proceedings. It has also

further directed to the trial court that soon after passing of the preliminary decree for partition separate possession of the property suo moto without requiring initiation of any separate proceeding , but list the matter for taking steps under Order XX Rule 18 of C.P.C. Thus submits that application is not required and the parties are bound to appear before this court without any application.

The present petition was registered in view of the application filed under Order XX Rule 18 of CPC by the petitioner. The preliminary decree was passed by this court on 01-02-2023 when the said circular was not issued. Though it is true fact that the final decree proceedings is the continuation of the proceedings in original suit, the fact that the respondents have the knowledge of the filing of the final decree is also to be seen. In view of the recent circular , this court while passing the preliminary decree, is fixing a date for

appearance of the parties for drawing of the final decree. However the present decree was passed in the year 2003 and the respondent might not have been aware of the final decree petition. As such the knowledge of the present petition is to be brought to the notice of the respondents , where more than a year has been elapsed from the date of decree. Therefore, this court is of the considered opinion that the notice about final decree proceedings has to be issued to the respondents . Accordingly the following

ORDER

Issue notice to the respondents if P.F. furnished

(Sharmila C.S.)
Senior Civil Judge & ACJM
Karkala.