

ORDERS ON I.A.NO.III

The petition is filed praying this court to draw Final Decree in terms of Judgment and Decree passed in OS No.356/2013.

2. The applicants have filed this I.A under order 1 rule 10 rule 2 CPC which came to be numbered as I.A.No.III praying this court to implead them as proposed respondent no. 6 & 7 to the petition on the ground that they are the sisters of plaintiff/decreed holder in OS No.356/2013 and the plaintiff without arraying them as a party had filed the suit and got decreed in his favour. Since these petitioners are also having share in the decretal property, their rights needs to be decided hence they are necessary parties to the petition and be permitted to come on record.

3. The said application is opposed by the petitioner on two counts which will be dealt hereafter.

4. Heard both sides.

5. First bone of contention of the petitioner is that, the proposed respondents had filed a suit in OS No.79/2004 seeking the relief of partition which came to be dismissed for default therefore they cannot be permitted to come on record as respondents. This court is not in agreement with the contention raised by the petitioner. In fact, our High Court of Karnataka in a decision reported in ILR 2012 Kar 4129 has held that when a suit for partition is dismissed for non prosecution, it does not bar the plaintiff to bring a fresh suit. When I apply the said ratio, then it is clear that suit of the applicants even if

it is dismissed for non prosecution they have every right to file a fresh suit. When such stood the law, the dismissal of earlier suit would not take away their rights to file fresh suit or oppose the subsequent suit.

6. Second contention is that, since the rights of parties are already decided in the original suit, even if the applicants have right over the suit property still they cannot be permitted to come on record. I am unhappy to accept this contention for the simple reason that our Apex court in a decision Ganduri Koteswaramma & Anr vs Chakiri Yanadi & Anr reported in AIR 2012 SC 169 has dealt about the scope and ambit of preliminary decree.

“A preliminary decree determines the rights and interests of the parties. The suit for partition is not disposed of by passing of the preliminary decree. It is by a final decree that the immovable property of joint Hindu family is partitioned by metes and bounds. After the passing of the preliminary decree, the suit continues until the final decree is passed. If in the interregnum i.e. after passing of the preliminary decree and before the final decree is passed, the events and supervening circumstances occur necessitating change in shares, there is no impediment for the court to amend the preliminary decree or pass another preliminary decree redetermining the rights and interests of the parties having regard to the changed situation”.

7. Therefore in view of the above proposition, the second contention stands rejected. Further, it is pertinent to mention that the petitioner has not disputed that the proposed respondents are not his sisters. When such stood the facts, there is no embargo to permit the applicants to come on record. In the backdrop of the above observation and keeping the principles enumerated under order 1 rule 10 (2) of CPC, I feel that the applicants are necessary parties to the petition so as to have a complete adjudication of their rights and also to avoid the multiplicity of proceedings. Hence I proceed to pass the following

ORDER

The application filed by the applicants under order 1 rule 10 of CPC is hereby allowed. They are permitted to come on record as Respondent No. 6 & 7.

The petitioner counsel is directed to carryout the amendment to the petition and to file amended petition.

Call on: 08.09.2020

Sd/-

Civil Judge & JMFC, Yadgir.