

:: Order below Exh.65 in Reg. Civil Suit No.02/2016 ::
(Saberabegam..Vs..Ameerhussain & Ors.)

1. Perused application and say. Present application is filed for framing of additional issues.
2. Defendant no.2 and 3 submitted that suit is for partition. Plaintiff has specifically pleaded that suit properties were owned and possessed by her mother and after her demise, plaintiff sought relief of partition, declaration of will to be null and void and for perpetual injunction. Defendant no.2 and 3 filed their additional W.S. at Exh.64 and specifically pleaded that the father of plaintiff and defendants were real owners and possessors of the suit properties by way of different registered sale deeds. Mother of plaintiff was not the owner of the suit properties. It is also specifically pleaded that suit properties have been purchased by different persons and those persons are necessary parties to the suit. However, plaintiffs have not made party to them. It is also pleaded that suit properties are converted into non agricultural purpose and therefore suit is under-valued. Considering pleadings from both sides, it is necessary to frame additional issues as proposed following additional issues:-
 - a. Whether plaintiff proves that the mother of plaintiff Late Mahetabee was a owner and possessor of suit properties ?
 - b. Whether suit is bad for non joinder of necessary parties ?
 - c. Whether plaintiff under-valued the suit claim and paid insufficient court fees ?
3. In this way, it is prayed that above mentioned proposed additional issues be framed.
4. Plaintiff objected the application by filing say at Exh.66 contending that, the application is not tenable in the eyes of law

because order is passed below Exh.1 on 15/01/2022 that there is no need to frame additional issues. The said order is not challenged by the defendants and there is no provision to file such type of application before the same court. They have suppressed the facts before the Hon'ble Court. Plaintiff has already filed her chief-examination affidavit. Therefore prayed to reject the application with costs of Rs.500/-

5. Peruse Exh.1 and Additional Written Statement filed by defendant no.2 and 3. Perused issues framed below Exh.51. Pleadings of both sides show that plaintiff has claimed prior ownership and possession of plaintiff's mother over the suit properties. Additional written statement also discloses that portion of the suit properties is sold to some other persons by way of registered sale deed. As per the Order 14, Rule 1(1) issues arise when a material proposition of fact or law is affirmed by one party and denied by the other. Therefore considering pleadings proposed issues needs to be framed as additional issues. Therefore application needs to be allowed. Hence following order.

Order

1. Application at Exh.65 is hereby allowed.
2. Additional issues are framed below Exh.51

Sd/-

(A. P. Kollam)

Date : 22-06-2024.

Civil Judge Junior Division,**Deoni**.