
(2014) 08 KAR CK 0147

In the Karnataka High Court

Case No : Writ Petition No. 50781 of 2013 (GM-CPC)

E. Shivaprakash

APPELLANT

Vs

Anasuya

RESPONDENT

Date of Decision : 22-08-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2), Order 22 Rule 10

Citation : (2014) 08 KAR CK 0147

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : R. Nataraj, Advocate for the Appellant; T. Seshagiri Rao, Advocate for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—Heard the learned Counsel for the petitioner. The petitioner is the applicant whose application to implead himself has been rejected. The background to the same is as follows:

2. The petitioner's father is said to have purchased one item of the suit property from defendants 2 and 3. This transaction had taken place before the institution of the suit for partition and separate possession. However, the petitioner's father was arraigned as the defendant no. 6. It transpires, during the pendency of the suit, defendant no. 6, the father of the petitioner had executed a gift deed in favour of the present petitioner and in the suit, he had filed a memo to state that he is no longer interested in the suit property. It is in this background that the present petitioner filed an application to come on record and had invoked Order I Rule 10(2) of the Code of Civil Procedure, 1908 (Hereinafter referred to as the "CPC", for brevity) That application having been rejected, the petitioner is before this court.

3. Notwithstanding that an application was made under Order I Rule 10(2) of the CPC, from a reading of Order XXII Rule 10 of the CPC, it is evident that the law

affords a right to such a party, as the present petitioner, in whose favour interest has been created during the pendency of the suit, to seek the leave of the court to continue the suit in the stead of his father, who was defendant no. 6. The said provision is reproduced hereunder for ready reference:

"10. Procedure in case of assignment before final order in suit--(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1)."

Therefore, from the above provision, it is evident that the petitioner is enabled to defend the suit in the stead of his father.

Consequently, the writ petition is allowed. The petitioner shall be impleaded as defendant no. 7. The defendant shall also be permitted to file the written statement, if any.