

(1960) 07 KAR CK 0009

In the Karnataka High Court

Case No : Civil Revision Petition No. 81 of 1959

M.L. Sridharan and Others

APPELLANT

Vs

M.L. Narasimhaswamy

RESPONDENT

Date of Decision : 08-07-1960

Acts Referred:

Citation : AIR 1960 Kar 320

Hon'ble Judges : A.R. Somnath Iyer, J

Bench : Single Bench

Judgement

(1) This revision petition is directed against the order made by the District Judge of Mysore on I. A. No. 3 in a partition suit brought by the respondent against the other members of the family. Defendants 2, 3 and 4 made an application I. A. 3 in that suit that three more properties should also be made the subject-matter of partition and that two more persons should be added as defendants. The Court below refused that application and it is against that order that the petitioners complain.

(2) On behalf of the plaintiff who opposed that application, it was argued by Mr. Venkateshamurthy that the plaintiff could not be compelled to convert his suit for partition of only some properties into a suit for a fuller partition or to add parties whom he did not desire.

(3) Mr. Narayana Rao, on behalf of the petitioners, contended that in a partition suit a defendant was entitled to ask for a larger partition and for the addition of parties in whose presence it should be made.

(4) It is true that the well accepted rule is that the plaintiff has exclusive dominion over his suit but that rule is not an inflexible rule. The question as to whether a defendant can ask for the addition of parties and for the inclusion of other properties for partition is one which has to be decided on the facts and circumstances of each cases.

(5) Now, in this case, Mr. Venkateshamurthy's contention is that if defendants 2, 3 and 4 desire fuller partition and for that purpose the addition of other persons as supplemental defendants, what they should do is to bring another suit for partition which could be tried along with the suit brought by the plaintiff.

(6) it does not appear to me that that is the only remedy available to defendants 2, 3 and 4. It may be, as Mr. Venkateshamurthy very rightly contended, that if defendants 2, 3 and 4 are ultimately found to have unnecessarily impleaded parties who should never have been added as parties, for the partition of properties which could not have been properly made the subject-matter of such partition, they should be made to bear the costs relatable to that part of the suit. But, that is not the same thing as saying that in a partition suit, if any of the defendants states that there are other properties to be divided, and, therefore, seeks the addition of other persons as supplemental defendants, he should be told that if he wanted a fuller partition, he should institute another suit for that purpose.

(7) That being the position, I set aside the order of the Court below and, in substitution of it, I make an order allowing I. A. No. 3.

(8) The condition subject to which I make this order is that, if it is ultimately found that defendants 2, 3 and 4 have unnecessarily added any supplemental defendant, or that they have asked for a partition of properties which could not properly form the subject-matter of such partition, the entire costs in regard to that part of the suit shall be borne only by defendants 2, 3 and 4.

(9) The other condition which I impose is that the Court-fee payable in respect of the additional properties, of which defendants 2, 3 and 4 seek partition, shall be paid by those defendants 2, 3 and 4.

(10) Costs of this revision petition will be costs in the cause and will abide the eventual result.

(11) Order accordingly.