

(2014) 03 KAR CK 0195

In the Karnataka High Court

Case No : Writ Petition No. 72889/2012 (GM-CPC)

Smt. Laxmibai

APPELLANT

Vs

Gurunath, Jyoti, Neelamma @ Bharati and Basavantappa

RESPONDENT

Date of Decision : 13-03-2014

Acts Referred:

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

Citation : (2014) 03 KAR CK 0195

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : Sachin S. Magadum, Advocate for Sri. N.L. Batakurki, Advocate for the Appellant; Ajay U. Patil, Advocate for R3, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

A.S. Bopanna, J.—The petitioner is before this Court, assailing the order dated 16.07.2012, passed on I.A. No. II, in FDP No. 6/2011, which is impugned at Annexure-C to the petition.

2. The respondent Nos. 1 to 3 herein are the plaintiffs in O.S. No. 89/2007 and the 4th respondent herein is the defendant. The suit is filed for partition and separate possession. The preliminary decree has been passed and the final decree proceedings have been initiated. The petitioner herein has purchased one item of the property, which was the subject matter of the suit through a sale deed executed by the defendants. In that circumstance, since the final decree proceeding is now pending, whereby the physical shares of the property would be assigned to the parties based on the preliminary decree, the petitioner, who is the purchaser, has filed an application under Order 1 Rule 10 of CPC, seeking to implead herself as one of the party to the final decree proceedings.

3. The Court below has rejected the application, only on the ground that the petitioner herein has purchased the property on 28.07.2008 i.e., after the suit was instituted on 26.07.2007. The said consideration made by the Court below

would not be relevant for the present circumstance, since even if the properties are ultimately divided and put in the possession of the parties, the defendant to the suit namely the vendor of the petitioner would certainly be entitled to a share in the property. By impleading, the petitioner would only ensure that the property purchased by her would be allotted to the share of her vendor. In such circumstance, she is the proper and necessary party to the said proceedings. This issue has also been considered by the Hon'ble Supreme Court in the case of Dhanalakshmi and Others Vs. P. Mohan and Others, , relied on by the learned counsel for the petitioner.

4. In that view of the matter, the order dated 16.07.2012 impugned herein is not sustainable. The same is accordingly quashed. I.A. No. II filed in FDP No. 6/2011 is allowed. The petitioner shall be permitted to implead herself as a party to the said proceedings

5. In terms of the above, the petition stands disposed of.