

A.No.1918 of 2021

in

C.S.No.76 of 2009

N.SESHASAYEE, J.

This application is filed by the 3rd party viz., M/s.Canbank Factors Limited, to implead itself as a defendant in the suit for partition.

2.It is the case of the applicant that Item No.7 of the schedule in suit for partition was offered as a security for the debt it has advanced. For realising the said amount, the applicant has already laid a suit in C.S.No.334 of 2014 and the same is pending on the file.

3.The applicant states that it is anxious to ensure that its property is not jeopardised in any way.

4.The plaintiff and other defendants filed separate counter affidavits.

5.In the counter affidavit filed by the 1st respondent / plaintiff, while denying the contention of the Applicant that item No.7 of the suit

schedule property belongs to M/s.Hotel Temple View Private Limited, took a stand that it belonged only to late K.Subbiah and the plaintiff had proceeded for the same against the legal heirs of the said K.Subbiah. It is further contended therein that the applicant himself had admitted that the 2nd defendant viz., K.S.Gita, a legal heir of the said K.Subbiah had executed only a personal guarantee in favour of the applicant and therefore, the Applicant, if at all, has got any grievance, has to proceed against the personal properties of the defendants and not as against item No.7 of the suit schedule.

6.Even if K.Subbiah is personally liable and not item No.7 of the schedule properties, still the law is that the estate of the legal heirs would be liable only to the extent of the estate that comes to a legal heir. So the properties of the legal heirs can be made liable upto the limit of the share in the estate that comes to them.

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7.This Court finds merit in the application. This application stands allowed accordingly. The applicant be impleaded as the 5th defendant. The plaintiff is hereby directed to carry out necessary amendment in the plaint.

8.Post the matter on 04.10.2021.

02.09.2021

kas/skr



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