

**A.No.1321 of 2023 in C.S No.540 of 2017**

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A.A.NAKKIRAN, J.

This application has been filed by the applicants/defendants to issue a direction, directing the 2nd respondent/Garnishee to grant license for running a pharmacy in J.M Hospital functioning in the ground and first floor of Item I of the suit schedule property.

2. The learned counsel for the applicants/defendants contended that after completion of her M.B.B.S in the year 2008, the 2nd applicant herein, started practice along with her father in the J.M. Hospital run by him and till date, she has been carrying out her practice and day today affairs is maintained by her. He further contended that as the hospital does not have pharmacy of its own, they are not in a position to issue bills to the patients, due to which the patients could not claim insurance for the medicines dispensed by the doctor and hence, she approached the 2nd respondent/garnishee for obtaining license to run a pharmacy. But, the office of the 2nd respondent informed that it is mandatory to get the consent of all the legal heirs so as to enable them to grant license for running the pharmacy. He further contended that since the 1st respondent/plaintiff herein had sent a representation to the 2nd respondent requesting him not to grant license for running a pharmacy, the applicants have come forward with the present application. Hence, he prays to allow this application.



3. The learned counsel for the 1st respondent/plaintiff contended that the present application invoking the discretionary relief under Section 151 is not maintainable. He further contended that the 2nd respondent is not a garnishee as alleged and he is not a proper or necessary party to the suit and no relief can be granted to the applicants and the direction as sought for, cannot be issued to the 2nd respondent. Hence he strongly opposed to allow this application.

4. On perusal of records, it is seen that the suit has been filed by the 1st respondent/plaintiff for the relief of partition and that after completion of her medicine course, the 2nd applicant/2nd defendant started practice along with her father in J.M hospital and after his demise, she has been continuing her practice in the said hospital situated in Item 1 of the suit schedule property. Considering the above facts and circumstances of the case and the submissions made on either side, this Court is of the view that as the legal heir of the deceased father, the 2nd applicant has every right to open a pharmacy in the hospital functioning in Item 1 of the suit schedule property and hence, no prejudice would be caused to the 1st respondent/plaintiff, in allowing this application. However, the applicants are liable to face the criminal or civil proceedings, if they are initiated against them.

5. In such view of the matter, this application is allowed.

14.12.2023

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