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*A.No.4494 of 2023
in CS.No.166 of 2023*

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R.N.MANJULA, J

The suit has been filed for partition by the plaintiff, who claims himself as one of the co-sharers of the suit property. The properties owned by the father of the plaintiff by name Kesarichand Bhutoria. He died on 30.08.2022 leaving behind the plaintiff and the defendants as his legal heirs. The plaintiff, first defendant are sons, 2nd defendant is the wife and the 3rd defendant is the daughter of the deceased Kesarichand Bhutoria.

2. The plaintiff has also filed an application seeking an injunction restraining the respondents 4 to 12 from releasing and disbursing the schedule mentioned movable assets lying with the respondents 4 to 12. The respondents 4 to 12 are not the parties to the litigation and the suit for partition is only between the plaintiff and defendants 1 to 3. A Garnishee order cannot be issued when the suit is pending and the subject of matter of the suit is yet to be decided.



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3. It would not have been appreciated if the plaintiff could have filed an application restraining the defendants from withdrawing or operating any of the assets lying with the respondents 4 to 12. So far as the relief claimed in the suit, the respondents 4 to 12 are unnecessary parties and rightly they have not been impleaded as parties to the suit.

4. In such a case, they ought not to have been added as parties to the application filed seeking interim relief also. The application in A.No.4494 of 2023 on the face of it is not maintainable as against the respondents 4 to 12, against whom the relief is claimed. Despite the defendants 1 to 3 have also been impleaded as respondents 1 to 3, no relief has been claimed against them. The way in which the application has been filed is fundamentally not maintainable and hence, the application is rejected.

31.08.2023
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