



A.No.4425 of 2023 in CS.No.691 of 1982

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RESERVED ON : 12.09.2023

PRONOUNCED ON : 08.12.2023

A.A.NAKKIRAN, J.

ORDER

This application has been filed by the Plaintiff to allow his son, Motamarri Kiran to substitute on his behalf in A.No.4785 of 2022 in CS.No.691 of 1982 and consequently in all pending applications.

2. The case of the Applicant is that the Applicant has filed the above suit for partition and separate possession of suit properties and also to render true and proper accounts of the income derived from the suit properties from 18.06.1977. By final order dated, 09.03.1990, the Defendants were directed to render true and proper accounts of the income derived from the suit properties. However, the Defendants did not come forward and render the true and proper accounts of the income derived from the suit properties from 18.06.1977 till date. The Applicant informed



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about the case to his son Motamarri Kiran. The suit had reached the finality. Considering his health condition, unless his son is brought on record, as his substitute in the suit, he will be put to irreparable loss, hardship and agony. Hence, this application has been filed seeking the relief as stated above.

3.In the counter affidavit filed by the 1st Respondent and on behalf of the other Respondents, it is stated as under:-

(i) The allegations contained in paragraph 2 of the affidavit are correct. No final orders were passed on 09.03.1990 and only a preliminary decree was passed on 09.03.1990. None of the properties are earning any income and hence, there is no question of rendering true or proper accounts. They are running a business at Devaraja Mudali Street property and hence, it is self occupied. With regard to the property at Kodambakkam, one portion of the property is in the possession of the Applicant and two portions are let out to tenants. One of the tenants is depositing the rents in Court pursuant to an order obtained by him in a Rent Control Proceedings and another tenant is depositing the rents in a bank account. The lands at Senrambakkam Village is not yielding any



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income and the property at Chinnaganjam village in Andhra Pradesh is not occupied by any person and is in a dilapidated condition and vacant.

(ii) The 1st Respondent has no personal knowledge about the illness of the Applicant and he is not disputing the same. It is absolutely strange and unheard of for any person to seek for substituting him with another person in a suit due to his health condition. This Court had already passed a final decree dated 27.09.2021 in respect of two of the properties, i.e., the property at Devaraja Mudali Street and the property at Kodambakkam and a new Advocate Commissioner has been appointed in place of the previous Advocate Commissioner for the other properties alone. The 3rd Defendant expired on 24.07.2022 and the Applicant, though aware about the same, did not file necessary application to bring on record his legal representatives. Therefore, after obtaining leave of this Court, he filed A.No.6032 of 2022 to bring on record the Respondents 3 to 5 herein as the legal heirs of the deceased 3rd Defendant and it was allowed. Although time was granted to the Applicant to file the amended copy of the Plaint, he has not filed the same till date. The Applicant is very much alive and at best, he can be represented through a Power of Attorney after obtaining leave of this Court. The suit is for partition in respect of the



properties left behind by their father and the son of the Plaintiff cannot be inducted as a party to the suit or substituted particularly when the Plaintiff is alive. Great prejudice will be caused to the Respondents if the present application is allowed. Hence, this application is liable to be dismissed.

4. The learned counsel for the applicant would submit that the suit had reached the finality. Since the applicant is aged person and suffering from various health problem, he is unable to attend the Court for contesting the case. Under such circumstances, he seeks this Court to appoint the applicant's son ie. Motamarry Kiran as his substitute in the suit to proceed the case further.

5.The learned counsel for the respondents would submit that it is absolutely strange and unheard of for any person to seek for substituting the plaintiff/applicant herein with another person in a suit due to his ill health condition. The plaintiff/applicant herein cannot be substituted with his son for contesting the suit which has been filed for partition in respect of the properties left behind by their father. However, while the applicant is very much alive, he can be represented through a Power of Attorney Agent



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after obtaining leave of this Hon'ble Court. Hence, this application is not maintainable and liable to be dismissed.

6. Heard both sides and perused the materials available on record.

7. On a perusal of the records, it is seen that in the partition suit, the plaintiff seeks this Court to substitute his son on his behalf to prosecute the suit considering his old age and illness. The reason stated by the applicant is not maintainable in the case of partition suit since he is alive to contest the suit. The substitute person ie. Motamarri Kiran, has no right as on this date to seek relief of partition. Therefore, he cannot be substituted on behalf of the plaintiff/applicant herein. While the plaintiff/applicant herein is suffering from illness due to old age related issue, it is always open to the plaintiff/applicant herein to prove his case with the help of any witness including his son.

8. Further, the effect of allowing this application would result in removing the name of the original plaintiff/applicant herein and substituting the plaintiff, Motamarri Kiran as the plaintiff when admittedly



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there is no claim of any share in his favour. However, it is always open to the plaintiff/applicant herein to engage a Counsel or execute the Power of Attorney to prosecute his case on his behalf.

9. In view of the aforesaid discussion, this application fails and is liable to be dismissed.

10. In the result, this application is dismissed.

08.12.2023

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
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Pre-Delivery Order in
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