

Nabhiraj and Others

Vs

Jayavatibai Alias Shantha Bai and Others

Civil Appeal No. 7561 of 1996

(K. Ramaswamy, G.B. Pattanaik JJ)

15.04.1996

ORDER

1. Leave granted.
2. We have heard learned counsel on both sides.
3. The first respondent instituted a suit dated 30-10-1981 for a declaration to the effect that she is the absolute owner of the suit land admeasuring 6 acres and 25 gunthas situated at Raichur. Subsequently, the appellants got impleaded themselves as the respondents under Order 1, Rule 10 CPC. We are informed that in spite of repeated adjournments, they did not file written statement and by an order of the Court they forfeited their right. However, in paragraph 12 of the voluntarily filed written statement, they have specifically stated that they "reserve their rights to recover their share of compensation amount illegally received by the first respondent (appellant) from the court acquiring the land in Survey No. 686". They also sought dismissal of the suit. The contention now sought to be raised is that the order of the court directing the first respondent to have the suit dismissed as against the appellants, would disentitle them from claiming any relief in the matter. We find no force in the contention. In this case, it is not the case of first respondent that she sought permission under Order 23, Rule 1 CPC to have the suit dismissed with liberty to file a fresh suit. In the plaint itself, the respondent did not seek any relief against the appellants. The appellants got themselves impleaded as party defendants during the pendency of the suit. In view of the specific stand taken by the appellants that they reserved their right to take appropriate proceedings in the form open to them, the first respondent is not prepared to proceed against the appellants in this suit. Under these circumstances, the permission granted by the court dismissing the suit as against the appellants cannot be stated to have been vitiated by any error of law.
4. The appeal is accordingly dismissed. It is stated that the suit is pending for years. The trial court is directed to dispose of the suit expeditiously. If anybody has filed or files any application for impleadment, it is directed to be dismissed. No costs.