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NABHIRAJ AND ORS.

v.

JAYAVATIBAI @ SHANTHA BAI AND ORS.

APRIL 15, 1996

B

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*Code of Civil Procedure, 1908 :*

C

*Order 1 Rule 10/Order 23 Rule 1—Suit for declaratory decree as regards ownership of certain lands—Application for impleading as party—No written statement filed despite repeated adjournments—Specific stand taken by the party that it had reserved its right to take appropriate proceedings—Hence the other party could not proceed against the party in the suit—Permission granted by Trial Court dismissing the suit against the party impleaded—Not vitiated by any error of law—Suit pending for years—Trial Court directed to dispose it of expeditiously—Also directed that if anybody has filed or files any application for impleadment, the same should be dismissed.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7561 of 1996.

E

From the Judgment and Order dated 10.4.95 of the Karnataka High Court in C.R. No. 2387 of 1994.

Uma Datta for the Appellants.

S.K. Kulkarani and Ms. Sangeeta Kumar for the Respondents.

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The following Order of the Court was delivered :

Leave granted.

We have heard learned counsel on both sides.

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The first respondent instituted a suit dated October 30, 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,

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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 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.

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.

G.N.

Appeal dismissed.