

:ORDER ON I.A. No.VI:

The defendant has filed this I.A. U/O.1 Rule 10 of C.P.C. praying to direct the plaintiff to include

Sri. Vasant S/o Ramraya Sonnalli
Age : 48 years, Occ: Agril,
R/o: Vijayapur

as defendant No.2 in the instant suit, since the necessary party to the proper adjudication of the matter.

2. The defendant in the accompany affidavit annexed to IA.No.VI categorically contended that, Sri. Vasant S/o Ramraya Sonnalli is necessary party for proper adjudication of the present suit and if the application is not allowed, defendant will be put to irreparable loss and no harm would cause to the plaintiff. The defendant further contended that, if the application is not allowed, the suit will not be adjudicated in the proper manner and allowing this application will not change the cause of action or possession of the suit. Hence, prayed to allow the I.A.

3. On the other hand, the counsel for the plaintiff has filed strenuous objections refuting each and every averments made in the I.A., and contended that, plaintiff has filed this suit for declaration praying to declare that, plaintiff has got right by

way of prescription right of easement over the suit schedule property and defendant has obstructed the plaintiff for usage of the schedule road. Hence, plaintiff arrayed the only defendant in the suit and no other person have objected the usage of the schedule road by the plaintiff and plaintiff has not arrayed any other persons as defendant. The plaintiff further contended that, said proposed defendant No.2 Sri. Vasant S/o Ramraya Sonnalli has already filed his affidavit asserting right of the plaintiff to use the schedule road. Hence, the application filed by the defendant is liable to be rejected and prayed to reject the application.

5. On considering the I.A of the defendant, the following points arise for my consideration:

1. whether defendant made out the grounds to allow this I.A.?
- 2.What order?

6. My findings on the above points are as under-

Point No.1. In the Negative

Point No.2. As per final order
for the following;

REASONS

7. **Point.No.1.** This is the suit filed by the plaintiff against the defendant for the relief of declaration praying to declare that, plaintiff has got easementary right over the schedule road which is mentioned as “ABCD” point and schedule road runs

from property bearing Sy.No.213/5 runs over the property bearing Sy.No.213/4, property bearing Sy.No.213/3 which are owned by defendant and property bearing Sy.No.213/1 and property bearing Sy.No.213/2 owned by plaintiff which are situated in the northward of the property of the defendant. As per the hand sketch produced by the plaintiff, the property of the proposed defendant Sri. Vasant S/o Ramraya Sonnalli is situated in the southward adjacent to Mulasavalagi to Nivalkhead road which runs from east to west. This is the suit for easementary right and plaintiff alleged that, the defendant is not letting the plaintiff to use the schedule road and filed the suit for the easementary right against the defendant and proposed defendant Sri. Vasant S/o Ramraya Sonnalli has not obstructed the plaintiff to use the schedule road. More over the schedule road is existed in the property of the defendant, though there is road existed in the property of the proposed defendant Sri. Vasant S/o Ramraya Sonnalli. But it is the case of the plaintiff that, proposed defendant Sri. Vasant S/o Ramraya Sonnalli never objected or obstructed the plaintiff to use the schedule road and be it as it may be, it is well settled law that, plaintiff is the master of his own case and he can choose the defendant and his claim in the suit. Here in the case on hand, plaintiff has categorically contended that, defendant being the owner of property bearing Sy.No.213/3 and property bearing Sy.No.213/4 has

obstructed the usage of schedule road by the plaintiff. Hence, he has filed the suit for the relief of easementary right over the schedule road. The defendant utterly failed to establish that, the application filed by the defendant is maintainable and there is absolutely no grounds made out by the defendant to allow the I.A. Hence, I answer point No.1 in the negative.

8. **Point No.2.** For the foregoing reasons, I proceed to pass the following:

ORDER

I.A.No.VI filed by the defendant
U/O.1 Rule 10 of C.P.C. is hereby
rejected.

Addl. Civil Judge, Sindagi