

Order on I.A.No.VIII

This order arises out of I.A.No.VIII filed by the plaintiff U/o. I Rule 10(2) R/w.Sec.151 of CPC seeking permission to implead Shri.Aniruddha Chandrakant Hunnargikar as defendant No.5 in the interest of justice.

2. In the affidavit enclosed with the application, the plaintiff Smt.Indira has stated that, she has filed the suit for the relief of declaration and permanent injunction and ancillary reliefs against the defendants in respect of suit property and she has been examined as PW.1. It is undisputed fact that land bearing R.S.No.201/4A+4B and land bearing R.S.No.201/5A+5B situated at Hindalaga, Tal & district:Belagavi which was earlier hold and possessed by Shri.Sarap family and Kudachikar family who have entered with agreement of sales as well as G.P.A in favour of Smarth Co-operative housing society limited which is co-operative society registered under the co-operative Societies Act-1959 and the said society under the authority given by the erstwhile owners who had developed the aforesaid lands thereby convert the said land into non-agriculture use as well as laid plots in the aforesaid

lands as per private layout and the said society after its development laying the developed plots put for sale to the members housing society and accordingly the third party applicant being the director of the aforesaid society had entered into sale transactions in respect of the aforesaid lands from time to time by executing registered sale deeds in favour of purchasers including the plaintiff in respect of NA plot bearing No.19 situated in the land bearing R.S.No.201/4A/4B and 201/5A/5B of Hindalaga Belagavi. Therefore, Smarth Co-operative housing society limited represented by its Director i.e. third party applicant being the GPA holder and agreement holder of erstwhile owners have done the developments of the said lands, sold several plots to the several purchasers and done several transactions. He is having knowledge of all the transactions taken place so he is necessary party to decide the real controversial issues involved in the suit. In the absence of the third party applicant, the rights of the parties cannot be decided. Hence, prayed to allow the application.

3. The defendant No.3 filed objections through his counsel contending that the evidence of PW.1 is partly recorded and thereafter posted for

further cross-examination. At the belated stage, the present application has been filed and the presence of the proposed defendant is not necessary for answering the issues involved in the suit. In view of these grounds, the defendant No.3 requested to reject the application with costs.

4. During the arguments both side counsels have reiterated the contents of the application, affidavit and objections.

5. The point that arises for the consideration of the court is as under:

Whether the presence of the proposed defendant is necessary to determine the material issues involved in the suit?

6. Perused the pleadings. The above point is answered **in the affirmative** for the following

REASONS

7. The plaintiff has filed this suit for the relief of declaration that she is the absolute owner in possession of suit property i.e plot bearing No.18 measuring 5775 Sq. feet out of R.S.No.201/4A+4B and R.S.No.201/5A+5B situated at Hindalaga, Tal &

Dist: Belagavi and consequential relief of permanent injunction restraining the defendants from causing obstruction to her peaceful possession and enjoyment of suit plot and alternatively if the defendants during the pendency of this suit high handedly dispossessed the plaintiff from suit plot and thereby decree directing the defendants to handover the possession of suit plot in para No.2 of the plaint to the plaintiff be passed.

8. According to the plaintiff, she has purchased the suit property and the proposed defendant is the Director of Smarth Co-operative Housing Society Limited and he laid plots, sold several plots to several purchasers and suit plots to the plaintiff as GPA holder of said society. Since, the defendant has questioned the legality of the sale deed executed in favour of the plaintiff by third party applicant in respect of suit property. So, the presence of third party applicant is important to decide the material issues involved in the suit. In the absence of third party applicant, the question in controversy involved in the suit cannot be decided effectually and completely. Apart from that, though the third party applicant has appeared through his counsel but not filed objections, but the defendant

No.3 who has no locus-standi, raised objections to implead the proposed party. In view of these reasons, this court is of the considered opinion that the presence of the third party applicant is necessary to decide the material issues involved in the suit. In view of these reasons, I answer the above point **in the affirmative** and I proceed to pass the following

: Order :

I.A.No.VIII filed by the plaintiff U/o. I Rule 10(2) R/w.sec.151 of CPC is hereby allowed.

Accordingly, the plaintiff is permitted to implead the proposed defendant as prayed for.

The plaintiff shall amend the plaint and shall furnish the amended plaint on or before next date without fail.

No order as to costs.

(P.F.Doddamani)

**I Additional Senior Civil Judge
& CJM.,Belagavi.**