

IN THE COURT OF IX ADDL.CITY CIVIL AND
SESSIONS JUDGE AT BANGALORE (C.C.H.5)

Dated: This the 7th day of April 2015

Present: Shri Krishnamurthy B.Sangannanavar,
B.Com.LL.B.,(Special)
IX Addl. C.C & S.J, Bangalore.

O.S. NO.260/2015 & O.S.No.7015/2014

In O.S.No.260/2015

Plaintiffs: 1) Smt.Sunandamma
2) Smt.Akkayamma
3) Smt.Gayathri
4) Manjunatha.N
5) Smt.Kavitha.N
6) Venkatesh

-Vs-

Defendants: 1) T.K.Kemparaju
2) Smt.Shanthamma
3) Smt.K.S.Suman
4) Smt.K.S.Sushimitha
5) M.Anand
6) Shyam Kumar
7) Mohan Kumar.L
8) Mahimaiah.C
9) Anjanmurthy
10) Hubert Anthony Abraham
11) Kenneth Andrews Abraham

In O.S.No.7015/2014

Plaintiff: T.K.Kemparaju

-Vs-

Defendants: 1) The Senior Sub-Registrar,
Yelahanka Upanagar

2) The District Registrar,
Gandhinagar Registration District.

3) Inspector of General of
Registration & Commissioner of
Stamps

COMMON ORDERS on I.A.No.1 and 2 filed
u/o.39 R.1 & 2 of C.P.C. in O.S.No.260/2015
and Orders on IA.No.1 and 2 filed u/o.1 R.10(2)
of C.P.C. by the proposed parties to come on
record as defendants in O.S.No.7015/2014

The plaintiff - T.K.Kemparaju in O.S.No. 7015/2014 has sought for declaration that sale deed dated 22.02.1997 registered as document No. 5226/1996-97 in the office of Senior Sub-Registrar, Yelahanka Sub-Registrar office, Bangalore is legal, valid and subsisting and to set aside the endorsement dated 25.9.1997 rejecting the registration of sale deed dated 22.9.1997 passed by 1st defendant - Senior Sub-Registrar and directing defendants 2 and 3 - The District Registrar and the Inspector General of Registration and Commissioner of Stamps to restore sale deed dated 22.2.1997 maintained in the office of 1st defendant on record.

2. In this suit, proposed parties Smt. Nagarathna and others on 29.11.2014 filed IA No.1 u/o.1 R.10(2) of C.P.C. to implead them as defendants 4 to 8 as they are necessary parties to determine the real controversies between the parties and on 19.1.2015, IA No.2 filed by Smt.Sunandamma and others also on the similar provision to implead them as necessary parties to the suit for effective and final adjudication of issue involved in the suit between parties.

3. These two IAs are strongly opposed by plaintiff on the ground that the issue in respect of suit schedule property is between plaintiff and defendants 1 to 3 and these proposed parties are neither proper nor necessary parties to decide the issue involved in the suit.

4. The schedule property under this suit is property bearing old Survey No.109, later Survey No.109/P-9, New Survey No.123, measuring 1 acre situated at Singapore village, Yelahanka, Bangalore North Taluk and bounded on the East by PWD Road, West by land of Chandrappa, North by land of Varadaraju and South by land of Krishnappa.

5. When facts stood thus, Smt.Sunandamma and others as plaintiffs 1 to 6 have instituted O.S.No. 260/2015 impleading 11 defendants have sought for declaration that they are the absolute owners of the schedule property and consequently, grant permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the schedule property as the defendants are not having any claim, right, title or interest over the schedule property.

6. The schedule described under this suit is property bearing old Survey No.109, later Survey No.109/P-9, New Survey No.123, measuring 1 acre situated at Singapura village, Yelahanka Hobli, Bangalore North Taluk and bounded on the East by PWD Road, West by land belongs to Gajalakshmana, North by land of Varadaraju and South by land of Krishnappa.

7. Thus from these two suits so far as schedule property is concerned one and the same and there is not dispute as to the identity. It is therefore, for the purpose of recording findings on IAs filed by respective parties arising out of these two suits are taken together in this common order

as they are agitating under the same title, right and interest in respect of the schedule property.

8. The parties to these two suits and the proposed parties placed certain materials namely documents. In O.S.No.260/2015, plaintiffs filed IA No.1 u/o.39 R.1 and 2 of C.P.C. to grant exparte temporary injunction restraining them from alienating or creating any encumbrance over the suit schedule property and the IA No.2 also u/o.39 R.1 and 2 of C.P.C. to grant ad-interim order of temporary injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the schedule property pending disposal of the suit.

9. These two applications have been opposed by plaintiffs by filing statement of objections contending that plaintiffs have not made out any prima facie case as they have already lost their right, title and interest much less possession over the schedule property and they are not in possession of the schedule property as on the date of institution of the suit, are not entitled for grant of temporary injunction.

10. In view of the rival contentions of the learned counsels on record for the respective parties and proposed parties, now the following points arise for consideration of this court:

(1) Whether plaintiffs in O.S.No.260/2015 has made out a prima facie case in their favour showing their lawful possession over the suit property?

(2) Do they show refusal to grant temporary injunction as prayed would cause injustice which cannot be compensated in terms of money?

(3) In whose favour, balance of convenience lies?

(4) Whether proposed applicants in IA No.1 and 2 filed u/o.1 R.10(2) of C.P.C. have made out grounds that they are proper and necessary parties to be impleaded as defendants in O.S.No. 7015/2014?

(5) What order?

11. The findings on the above points are recorded as under:

| | |
|--------------------|-------------------------------------------|
| Point Nos.1 to 3 : | In the Negative |
| Point No.4 : | In the Affirmative |
| Point No.5 : | As per final order, for the following: |

REASONS

12. **Point Nos.1 to 4:** It is not necessary to take up these points one by one to avoid repetition of the facts as such they are taken together for discussion and determination.

The plaintiffs in O.S.No.260/2015 have sought for declaration that they are the absolute owners of the schedule property and sought for grant of permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the schedule property on the ground that they are children of late Nanjundappa and late Smt. Achamma and the 1st defendant-T.K.Kemparaju fraudulently with malafide intention obtained a sale deed from Smt.Achamma, their mother on 22.2.1997 and rectification deed 24.6.1997 against public policy, same was recently came to their knowledge and their mother Achamma died on 10.4.2006 leaving behind the plaintiffs and 1st defendant taking undue advantage of their ignorance and illiterateness obtained consent deed dated 22.6.2013 in respect of non-existence of sale deed dated 22.2.1992 without disclosing the facts pertaining to conveyance and on the strength of such records, 1st defendant obtained khata

M.R.No.H8/2012-13 dated 27.3.2013 and the 1st defendant in O.S.No.7015/14 has sought for declaration of his alleged sale deed dated 22.02.1997 as valid and sought to set aside the order dated 25.9.1997 passed by the Senior Sub-Registrar and pleaded that signature of Smt.Achamma, their mother is not tallying not only in the sale deed dated 22.2.1997 but also in rectification deed dated 24.6.1997 and the 1st defendant-T.K.Kemparaju is trying to alienate the suit schedule property and the defendants are trying to interfere with their peaceful possession and enjoyment of the schedule property basing on such records although they are in full possession and enjoyment of the suit schedule property.

13. However, the above pleas has been categorically denied by 1st defendant contending that plaintiffs have no iota of evidence to prove that they are in lawful possession and enjoyment of the suit schedule property as on the date of the institution of the suit. Further contending that suit for partition filed in connivance with these parties in O.S.No.2642/14 pending on the file of Cch-39 came to be rejected in exercise of Order 7 Rule 11 of C.P.C. by an order dated 6.12.2014 and the

records are clinching the factum of possession of defendant No.1 over the schedule property. Further contending that O.S.No.7015/14 is filed by him in respect of suit schedule property against defendants 1 to 3 for declaration that sale deed dated 22.02.1997 registered in the office of Senior Sub-Registrar in respect of schedule property is legal, valid and subsisting and to set aside the endorsement dated 25.9.1997 rejecting the registration of sale deed dated 22.09.1997 is between himself and defendants 1 to 3 and in the said suit these plaintiffs are nothing to do or they did not have any role to play and the proposed parties on two IAs' are neither proper nor necessary parties to adjudicate upon the real questions in controversy to be determined by the Court in the suit and submits that no prima facie case has been made out by plaintiffs to seek relief of temporary injunction as prayed and in case of grant of temporary injunction as prayed by plaintiffs, much hardship would cause to 1st defendant than plaintiffs and the balance of convenience lies in his favour and in this regard, they have placed documents as placed by plaintiffs which are to be now examined to determine whether plaintiffs have made out prima facie case

in respect of schedule property as on the date of the institution of the suit and to decide on the other two points being consequence of the result of the finding on the point of prima facie case.

14. The plaintiffs in O.S.No.260/2015 have produced self drawn family tree, grant certificate dated 19.4.1978, copy of Government Official Memorandum No.LND(3)SR27/1977-78 dated 17.10.1977, copy of RR, Mutation Register vide M.R.No.9/78-79, copy of RTC for the year 1997-2001, Mutation Register M.R.No.8/97-98, RTC for the year 2001-2013, certificate of death of Smt.Achamma, MR H8/2012-13, RTC for the year 2013-14, complaint copy in PCR No.19850/14, copy of rejection order dated 25.9.1997 with its cover note, copy of encumbrance certificate and they have produced copy of sale deed dated 22.2.97 and rectification deed dated 24.6.1997, consent deed dated 22.6.2013. It is therefore, in the opinion of this Court, sale deed dated 22.2.1997 said to have been executed by Smt.Achamma and rectification deed dated 24.6.1997 executed by her and consent deed dated 22.6.2013 by her LRs would play vital importance since Mr.N.Manjunatha, the only son to

Smt.Achamma was also consenting party to the sale deed and rectification deed dated 22.2.1997 and 24.6.1997 respectively and further, daughters have also conceded under consent deed dated 22.6.2013 in favour of Mr.T.K.Kemparaju – plaintiff in O.S.No.7015/2014 who is the 1st defendant in O.S.No.260/2015.

15. It is important to note here that in O.S.No.2642/14, learned 38th Additional City Civil Judge ordered to reject the plaint in exercise of Order 7 Rule 11(a) and (d) of C.P.C. and held plaint is rejected for want of cause of action and also as barred by limitation on 6th December 2014 in O.S.No.2642/14. This suit was filed by Smt. Nagarathna w/o. Venkatesh and others against defendants of whom 7th defendant is none other Mr.T.K.Kemparaju and upon perusal of the same could be said that 7th defendant was alone the contesting defendant and rest of them are from one family and they did not have any opposition of the said lis was not considered by the court since rejected for want of cause of action. It is submitted by learned counsel for these parties that an appeal is filed before the High Court aggrieved by the order passed by the said court, pursuant to IA

No.10 filed by 7th defendant-Mr.Kemparaj. It is to be noted here that the said suit is filed by the proposed parties and they now came before this court, intend to come on record in O.S.No. 7015/2014, wherein suit property is property bearing Survey No.109, later Survey No.109/P-9 newly assigned as Survey No.123 measuring 1 acre 18 guntas of kharab land bounded on the East by PWD road, West by land belongs to Gajalakshmana, North by Varadaraju, South by land belongs to Krishnappa.

16. The 1st defendant, who is contesting party on the other side to those parties, in O.S.No.260/15 has produced copy of sale deed executed by defendants 1 to 4 in favour of Anand namely defendant No.5, copy of sale deed executed by defendants 2 to 4 in favour of Shyam Kumar namely defendant No.6, two sale deeds executed by defendants 2 to 4 in favour of defendant No.7, sale deed executed by defendants 2 to 4 in favour of defendant NO.8, sale deed executed by defendant No.1 in favour of Anjanamurthy namely defendant No.9, sale deed executed by defendants 2 to 4 in favour of defendants 10 and 11, they are all dated 9.6.2014 and 23.12.2014 respectively in respect of

schedule property and they are defendants 5 to 11 in O.S.No.260/15 besides revision appeal filed by plaintiffs in case No.R.A.391/2014-15 before Assistant Commissioner, Bangalore North and written statement and additional written statement filed by them in O.S.No.2642/14.

17. Further, they have also produced order passed by Special Tahsildar, Bangalore north taluk in RRT (Disp) CR-210/2011-12 dated 27.3.2013, copy of the letter issued by office of the Deputy Commissioner to Tahsildar, Bangalore North Taluk dated 11.6.2013, extract of mutation mutating the name of defendant No.1 for the period 2012-13 dated 27.3.2013, extract of RTC for the period 2012-13 and 2013-14 which are standing in the name of defendant No.1 - Mr.T.K.Kemparaju that he is in possession of the schedule property, extract of statement of account dated 11.2.2015 for the period from 1.4.2012 to 31.3.2013 issued by Karnataka Bank for having paid advance sum of Rs.2,80,000/- vide three cheques by defendant No.1 - T.K.Kemparaju to plaintiffs 4 and 5 to enable them to execute the deed of consent, they have produced tax paid receipt for having paid the

land taxes in respect of schedule property dated 23.9.2014.

18. The sale by Smt.Achamma, w/o. late Nanjundappa in favour of T.K.Kemparaju dated 25.9.1997 was ordered to be rejected by Senior Sub-Registrar on the ground that the property in question was that it was Government gomal opposed public policy. However, by an order dated 21st November 2010, the Special Deputy Commissioner held that the land has also not been included in the list of encroachment of Government lands as such, ordered to continue the name of plaintiff's vendor Smt.Achamma in respect of the land in question as existing in the revenue records such as RTC etc., The Tahsildar, Bangalore north (Addl.) taluk shall take necessary action and for such reasons, the proceedings in respect of lands in Survey No.109/P-9 measuring 1 acre situated at Singapore village initiated against Smt.Achamma, w/o. late Nanjundappa liable to be dropped and accordingly, the proceedings are dropped and subsequently in M.R.No.H8/2012-13, name of defendant No.1 – T.K.Kemparaju could be found in respect of 1 acre of land and even in M.R.No.T2/2012-13 for the year 2012-13, name of

T.K.Kemparaju could be seen for 1 acre, similar name could be found in RTC for the year 2012-13, 2013-14. Further in R.R.T.(Dispute) CR:210/2011-12 filed by Mr.N.Manjunath, Sunandamma, Akkayamma, Kavitha, Venkatesh against T.K.Kemparaju. The Special Tahsildar, Bangalore North Taluk has ordered to effect khata in the name of T.K.Kemparaju pursuant to sale deed dated 22.2.1997 executed by late Smt.Achamma. Further, at this stage, most important documents are the particulars of the Bank statement of Mr.T.K.Kemparaju that on 17.8.2012, Rs.1.0 lakh was received by Smt.Kavitha through cheque bearing 962754; Rs.30,000/- by Mr.Manjunatha on 26.12.2012 with cheque bearing No.966052 and Rs.1,50,000/- on 23.5.2012 the cheque bearing No.961855 and in O.S.No.2642/14 filed by Smt.Nagarathna against Smt.Sunandamma and others wherein 7th defendant is Mr.T.K.Kemparaju and in paragraph-7 of the written statement submitted by defendants 1 to 6, they have submitted, *"It is submitted that the defendant No.7 forcibly obtained the sale deed from these defendants by showing Gun. Since the market value of the property is fetches Crores together, in the Confirmation deed the 7th defendant stated that*

Rs.3 lakhs has been given to these defendants for releasing their lawful right is emphatically denied as false. But the 7th defendant has issued cheque in the name of these defendant for Rs.2 lakhs only. At the time of registration, the 7th defendant acted rudely and his followers more than 20 persons were present, all of them have threatened these defendants saying that they will finish these defendants if they have not signed the sale deed and also threatened if these defendants disclosed the matter or filed any criminal case against the 7th defendant, they will finish these defendants and also further states that they are backed by several legislative members and also by money power. In that circumstances, the 7th defendant and his followers forcibly obtained the signatures of these defendants on the confirmation deed. These defendants never consented or released their lawful right in favour of the 7th defendant willfully.”

19. Further in their additional written statement in paragraph-1 “*The 7th defendant knowing fully well about the fraudulent sale deed obtained by 7th defendant from Smt.Acchamma, as per the document No.5226/1996-97 of book-I registered in the office of the Sub-Registrar,*

Yelahanka on 22.2.1997 has been cancelled from the then District Registrar, since the 7th defendant has not paid the required stamp duty from its order No.21/1997-98 dated 25.9.1997. Suppressing the same and knowing fully about the said sale deed has been cancelled, the 7th defendant forcibly obtained confirmation deed from these defendants on 22.6.2013. As per the confirmation deed the 7th defendant made the application before the Revenue authorities and mutated his name in all the revenue records. The confirmation deed was obtained by forcibly and threatening these defendants with the help of 7th defendant.”

20. Further in paragraph-2, “*These defendants are ready to repay the amount of Rs.3,00,000/- with 12% interest per annum to the 7th defendant.*” In paragraph-3, “*These defendants submit that the 7th defendant played fraud not only with Smt.Acchamma and also with these defendants.*”

21. Thus, from such contentions, taken by them in the written statement, viewed from any angle, it can be said at this stage did come to their assistance to contend that in O.S.No.260/2015,

they have made out a prima facie lawful possession over the schedule property. In so far as showing Gun to obtain sale deed from Late Achamma, rectification deed from her and subsequent obtaining of consent document which were are all by playing fraud, coercion and undue influence would be matter of trial and now, this court cannot hold a mini-trial to record findings on prima facie documents.

22. It is therefore, now the most important documents which are to be considered are sale deed dated 22.2.1997 executed by Smt.Achamma in favour of Mr.T.K. Kemparaju which of course is ordered to be rejected by Senior Sub-Registrar and to that effect, Mr.T.K.Kemparaju as plaintiff in O.S.No.7015/14 has filed a suit against defendants 1 to 3 to declare that documents presented in the office was valid and legal. Whether or not such suit is maintainable or not would be come out only during the course of full-dressed trial as it is not the stage to determine on such nice questions. Further, to note here that after execution of the said sale deed Smt.Achamma did not sit quiet, but executed rectification deed in favour of T.K.Kemparaju on 24.6.1997 and she died leaving

behind her son and daughters who are before the court to be come on record as additional defendants in the suit filed by Mr.Kemparaju opposing his claim made against the defendants 1 to 3 who are the government officers. Further in O.S.No.260/15, these parties have sought to declare that they are the owners in lawful possession and enjoyment of the suit schedule property. In so far as the documents produced by plaintiffs in O.S.No.260/15 are concerned, the plaintiff in another suit Mr.T.K.Kemparaju has not disputed but the plaintiffs in O.S.No.260/15 are disputing the sale deeds said to have been executed by Smt.Achamma dated 22.2.1997 and rectification deed dated 24.6.1997 on the ground that LTMs as could be seen from those documents are not tallied the LTMs of Achamma and the consent deed dated 22.6.2013 executed in ignorance of law as they are all illiterates is subject of trial and at the stage of hearing the IAs, such contentions are not available to form an opinion that such documents are not at executed by them. In such view they cannot be said have made out a prima facie possession in respect of schedule property.

23. It is not in dispute that Smt.Achamma died on 10.4.2006. If we examine two important documents which are sale deed, rectification deed wherein Mr.N.Manjunatha - plaintiff No.4 is a consenting witness and he was also one of the attesting witness. Further, they have received some money from T.K.Kemparaju and have executed consent deed wherein referred about sale deed executed by Smt.Achamma and her execution of rectification deed by receiving Rs.3.0 lakhs which is corroborated from Bank statement of T.K.Kemparaju maintained by Karnataka Bank.

24. Thus, the above such documents coupled with RTC viewed from any angle, plaintiffs in O.S.No.260/2015 cannot be said that they have made out a prima facie case in their favour that they are still in lawful possession as on the date of the suit over the suit property. However, by holding so in their suit it does not mean to say that they are not at all proper or necessary parties to be come on record in O.S.No.7015/2014. It is therefore, at the very outset, this Court has incorporated as to the relief sought by the plaintiff - Mr.T.K.Kemparaju in O.S.No.7015/14 against defendants 1 to 3 who are the registering authority

wherein the plaintiff has sought for declaration that he is owner to the schedule property on the basis of the sale deed said to have been executed by Smt.Achamma in his favour which was subsequently rejected by 1st defendant and the plaintiff has questioned the validity of the authority of the 1st defendant in rejecting the sale deed and the plaintiffs in O.S.No.260/15 as well as the proposed applicants u/o.1 R.10(2) of C.P.C. who are LRs of Achamma, if not necessary parties to decide the questions to be adjudicated upon in O.S.No.7015/14 are to be held proper parties to reach to the logical end in respect of the schedule property since Mr.N.Manjunatha, the only son of Smt.Achamma and his sisters who are daughters of Smt.Achamma have subsequently, executed a consent deed in favour of plaintiff as such, viewed from any angle, they cannot be said not proper or necessary parties to be come on record in O.S.No.7015/2014 filed by Mr.Kemparaj.

25. Learned counsel for Mr.T.K.Kemparaju placed a reliance reported in **MLJ 1965 (2) page 692 in Mrs. Christine Pais v. K.Ugappa Shetty & another**, it was held *Title passes with the execution and registration of the sale deed.*

26. It is important to note here that in O.S.No.7015/14, plaintiff-T.K.Kemparaju has sought for declaration that the sale deed executed by Smt.Achamma is valid and legal. Under such circumstances, while hearing on IA, it is not fair to conclude that title passed in favour of Mr.T.K. Kemparaju, since 1st defendant in his suit ordered to reject the said document which is still an issue to be decide by the Court in his suit only after conclusion of the trial.

27. He placed reliance reported in **ILR 1992 Kar. 3772 in M/s. Patel Enterprises vs. M.P. Ahuja** wherein held,

“One of the factors to be considered by the trial Court while considering the case for temporary injunction is whether prima facie case is made out by the plaintiff. This certainly would include the nature of the suit filed and its maintainability. If, on the face of it, the suit is not maintainable, question of issuing any temporary injunction would not arise.”

28. Further in **AIR 2008 SC 2291 in Mandali Ranganna & others v. T.Ramachandra & others**, it was held:

“While considering an application for grant of injunction, it must also take into consideration the conduct of the parties. Grant of injunction is an equitable relief. A person who had kept quiet for a long time and allowed another to deal with the properties exclusively, ordinarily would not be entitled to an order of injunction.”

29. Further in **AIR 2011 SC 2220 in The Joint Action Committee of Airlines Pilots Associations of India & others v. The Director General of Civil Aviation & others**, it was held:

“The doctrine of election is based on the rule of estoppel. The parties should not blow hot and cold by taking inconsistent stands and prolong proceedings unnecessarily.”

30. In **AIR 1975 Allahabad 395 in Jagadish v. Rajendra**, it was held:

“Plaintiff not in possession on date of suit. He is not entitled to an injunction restraining the

defendant from interfering with his possession.”

31. In **AIR 2002 Allahabad 271 in Kishan Lal v. Radhey Shyam and others**, *It was held that “if the plaintiff fails to establish his legal right to the property or his legal right to continue in possession, he cannot be granted perpetual injunction against the owner or the manager of the property.”* Thus to substantiate his contention that plaintiffs Smt. Sunandamma and others in O.S.No.260/15 have not made out a prima facie case in their favour to seek the relief against defendants restraining them from alienating the schedule property and restraining from interfering with their peaceful possession and enjoyment of the suit property are all kept in mind by the Court while appreciating rival contentions of the parties considering the documents that plaintiffs in O.S.No.260/15 have not made out a prima facie case to seek the relief sought in the IAs.1 and 2 in their suit.

32. In so far as O.S.No.7015/2014, learned counsel for plaintiff namely counsel for Mr.T.K.Kemparaju has brought to the notice of the Court **As to the procedure on admitting to**

registration contemplated u/s.58 of the Indian Registration Act and he submits that

“In a full bench case of Madhya Pradesh High Court it was held by the majority that neither in the Registration Act nor in the Stamp Act is there any provision giving to the registering officer any power to examine whether an instrument *already registered* was or was not duly stamped and to impound it. As soon as the registering officer registers a document presented to him for registration, the function in the performance of which the document was produced before him is over and he thereafter becomes *functus officio* having no power under sec.93 of the Stamp Act to impound the document.”

and he brought to the notice of the Court u/s.67 **Of the Controlling Powers of Registrars and Inspectors-General** and he contends that *Registrar cannot cancel registration and Registrar cannot order production of a document after it is registered.*

33. Thus same would be considered only during the course of full-dressed trial and in

O.S.No.7015/14 when plaintiff-T.K.Kemparaju has sought for declaration that the document said to have been executed by Smt.Achamma is valid and legal which came to be filed after long lapse of time would be decide by this Court in his suit as to the effect of rejection of the document presented for registration by the 1st defendant - Senior Sub-Registrar considering provisions of law which he has brought to the notice since the applicants and the plaintiffs in O.S.No.260/15 have also intend to come on record as parties being LR's of executant of the said document.

34. Learned counsel for T.K.Kemparaju-plaintiff placed reliance reported in **AIR 1988 Allahabad 160 in Food Corporation of India v. Mahabir Prasad Bhartiya** wherein held, *Suit for mere declaration be granted in view of Section 9 and Order 7, Rule 7 of C.P.C.* would also be considered at an appropriate stage of the suit.

35. Learned counsel while opposing the IAs filed by proposed parties placed reliance in **AIR 2009 (NOC) 93 (Orissa) in Panjum Bibi alias Ramjan Bibi & others v. Najma Alim & another** wherein held in an *Eviction suit, applicant claiming*

herself to have acquired title by way of registered sale deed from original owner cannot be impleaded as party defendant in as much as simple suit for eviction will be converted into most complicated suit for title.

36. In **AIR 2009 (NOC) 1450 (A.P) in Rajendranagar Residents Welfare Association Rep.by its Secretary John Samuel, Visakapatnam v. Visakhapatnam Municipal Corporation Rep. by its Commissioner, Visakhapatnam & another**, it was held *when it had no direct interest in subject matter of dispute, refusal to implead Association is proper.*

37. In **ILR 1996 KAR 569 in Muddukrishna vs. Rudranamma**, it was held *Third party against whom no relief sought & no order made, not necessary or proper party – Tenants denying right of landlady safeguard interest of other parties; not open to come on record in eviction petition & complicate the same.*

38. In **ILR 1985 KAR 1761 in Basavanneppa Yellappa Angadi vs. Shivappa Mallappa Hooli** it was held *Person should not be*

impleaded as a defendant merely because he is incidentally affected by the judgment.

39. In **ILR 1987 KAR 1242 in M/s.Chitalia Bros. vs. The South Indian Bank**, it was held

“The principle is even stronger in the case of a plaintiff as against whom another defendant is sought to be added. It is the plaintiff that comes to Court alleging a cause of action as against him. The very basic principle of judgments inter partes is that the judgments are not judgment in rem but declaratory and operative only as between them. The plaintiff being generally dominus litus, I fail to see on what principle of justice he can be compelled to fight against some other litigant not of his own choice unless such a process is required by a positive rule of law.”

40. In **AIR 1996 SC 2755 in Vinay Pratap and others v. Sambhu Saran Sinha and others**, it was held *Plea that petitioners should be made party as question of genuineness of deed of relinquishment signed by father cannot be decided*

in their absence – Not tenable since suit is one for specific performance and not for title.

41. In **AIR 2005 SC 2813 in Kasturi vs. Iyyamperumal and others** it was held:

“Suit for specific performance of contract for sale – Third party/stranger claiming independent title and possession over contracted property – Is neither necessary nor proper party and, therefore, not entitled to join as party defendant in suit.”

42. In **1992 AIR SCW 846 in Ramesh Hiranand Kundanmal vs. Municipal Corporation of Greater Bombay and others** it was held, *Party to be added must have direct interest in disputed property.*

43. Thus, this court has gone through all the above decisions and the principles laid in those decision which in the opinion of the curt are not applicable to the facts in dispute between parties since the proposed parties are admittedly, LRs of Smt.Achamma and considering the subsequent action of the Revenue Department in the matter of suit schedule property and considering the revenue records which the proposed parties have produced,

whether or not they are entitled for relief of temporary injunction as prayed in O.S.No.260/15 but facts remain that Smt.Achamma executed a sale deed in favour of Mr.T.K.Kemparaju and Mr.N.Manjunatha, her only son was a consenting witness to the said document and subsequently, her daughters and this N.Manjunatha have also executed a consent deed in favour of T.K.Kemparaju. Further during the life of Smt. Achamma, she has executed a rectification deed which is available on record and they are all registered documents. It is therefore, they can not be said neither proper nor necessary parties to come on record in O.S.No.7015/14, since plaintiff-T.K.Kemparaju has sought for declaration although against defendants 1 to 3. In this view of the matter, these parties are to be held proper or necessary parties to decide the questions involved in the suit and no harm would cause to plaintiff by their participation in the suit. On the contrary, this court is of the opinion that in order to reach to logical conclusion as to the dispute once for all, their participation is very much required in the said suit. In this view of the matter, findings on points 1 to 3 would be record in the Negative and it

goes without saying that finding on point No.4 would be record in the Affirmative.

44. **Point No.5:** In view of the above findings and in the result, this court passes the following:

O R D E R

- (a) I.A. No.1 & 2 filed by plaintiffs in O.S.No.260/2015 u/o.39 R.1 & 2 of C.P.C. are hereby dismissed as devoid of merits.
- (b) It is hereby ordered to allow IA No.1 and 2 filed by proposed parties u/o.1 R.10(2) of C.P.C. in O.S.No.7015/2014. Consequently, they are ordered to be impleaded as defendants 4 to 14 respectively in the said suit.
- (c) The plaintiff in O.S.No.7015/2014 is directed to implead them as additional defendants in time and submit amended plaint in time. The defendants 4 to 14 are at liberty to submit their written statement to the case of the plaintiff.
- (d) A copy of common order is directed to be kept in O.S.260/2015.
- (e) Cost of these applications shall be the cost in the cause.

(Dictated to the Judgment Writer, transcribed by her, corrected and then pronounced by me in the open court, on this the 7th day of April 2015).

(Krishnamurthy B.Sangannanavar)
IX Addl. City Civil & Sessions
Judge, Bangalore.

