

**IN THE COURT OF THE PRINCIPAL CITY CIVIL AND
SESSIONS JUDGE, AT BENGALURU**

Dated this the 2nd day of March, 2021

PRESENT: SRI. ANIL B. KATTI,
B.Com., LL.B (Spl),
Principal City Civil and Sessions Judge,
Bengaluru.

O.S. No. 825/2015

Plaintiff :- Mr.Yeshwanth Shenoy
and Another

(Sri.Praveen D.M., Advocate)

-V/s-

Defendants :- Mr.Rajeev Kumar
and Others

(D.1 & D.2 :-
Sri.M.S.Mukaram, Advocate)
(D.3 :-
Sri.M.G.S.Kamal, Advocate.)

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PARTIES IN I.A.NO.III

Applicant :- Maqsood and Maqdoom
Proposed defendant Benefit Trust,
No.4 Beneficial Trustees,
Mr.Maqsood Ali and
Mezan Maqdoom Ali,
Private Trust,
At "Ali Estate"
Vasudevapura Village,
Yelahanka,

Bengaluru North Taluk,
Bengaluru - 560064.

Represented by its
registered Irrevocable
GPA Holder

Mr.Rajeev Kumar
S/o. Baldev Raj Kumar,
Aged about 50 years,
R/a. No.32, 'ANGASANA',
Rajanugunte,
Bengaluru - 560064.

(Sri.M.S.Mukaram, Advocate)

-V/s.

Respondents :- Mr.Yeshwanth Shenoy
and others.

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ORDER ON I.A.NO.III

The present application is filed by the counsel for defendants under Order I Rule 10 r/w Sec. 151 of C.P.C. to implead the proposed defendant Maqsood and Maqdoom Benefit Trust, Beneficial Trustees as party to the suit.

2. It is contended in the affidavit filed in support of the application that defendant No.1 is G.P.A. holder of

defendant No.2 and 3 who are the beneficial trustees of Maqsood and Maqdoom Benefit Trust and they have also executed Joint Development Agreement in favour of defendant No.1 by taking necessary permission from the Court in Misc. Petition No.274/2014. The proposed defendant - Maqsood and Maqdoom Beneficial Trust is the absolute owner of suit schedule properties by virtue of registered five different sale deeds. The Trust was created for lawful purpose under the provisions of Indian Trust Act, 1882 and under a Settlement Deed dated 29.10.1969, the settlers late Mehmood Ali and Mrs.Tera Mehmood Ali created the Trust in the name of proposed defendant naming defendant No.2 and the late father of defendant No.3 - Maqdoom Ali, absolutely excluding their right, title or interest over the Maqsood and Maqdoom Benefit Trust. The Trust is not dissolved as per the provisions of Indian Trust Act, 1882. The plaintiffs on the basis of forged, concocted and fabricated sale deeds with illegal compromise are asserting their right over the suit schedule properties. Therefore, Maqsood and Maqdoom

Beneficial Trust is necessary party to the present proceedings to settle all the controversies between the parties to the suit. The suit subject matter cannot be effectively adjudicated without the Trust being party to the suit. Therefore, prayed for allowing the application.

3. On service of notice of I.A.No.III to the counsel for plaintiffs, has filed objections contending that the Trust was created on 29.10.1969 under a registered Settlement Deed for a period of 30 years which has expired on 29.10.1999. Therefore, late Mehmood Ali and late Mrs.Tehara Mehmood Ali had power to sell the properties. The plaintiffs are the absolute owners of schedule 'A' and 'B' properties which they have purchased under registered sale deeds for valuable consideration. The defendant No.1 only in order to cause harassment and disturbance for the peaceful possession and enjoyment of the suit schedule properties by the plaintiffs, has filed the present application seeking impleadment of Maqsood and Maqdoom Beneficial Trust

as party to the suit. The defendants by suppressing the earlier proceedings and by playing fraud, obtained permission for entering the Joint Development Agreement in Misc. Petition No.274/2014. The said Joint Development Agreement and the G.P.A. in favour of defendant No.1 is said to have been executed by defendant No.2 and 3, are challenged by the plaintiffs in the suit. Therefore, on these grounds prayed for dismissal of the application.

4. Heard the arguments.

5. On the basis of the above narrated facts, following points arise for determination of Court.

1. Whether the proposed defendant Trust is a proper and necessary party in the present suit to adjudicate the claim of plaintiffs and defendants?

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**: The plaintiffs are claiming their ownership right over six properties covered under 'A' schedule which they have purchased under registered sale deed as pleaded in paragraph No.4 of the plaint. The plaintiffs are similarly claiming their ownership right over four properties purchased under 'B' schedule. The said fact is evidenced from document Nos.1 to 10 produced by the plaintiffs along with the suit. The said fact is also not in serious dispute by the defendants in view of their pleadings in the written statement.

8. The defendant No.2 and his two brothers started litigation after plaintiffs acquiring right over the suit 'A' and 'B' schedule properties by virtue of registered sale deed by filing O.S.338/1993. The said suit ended in compromise evidenced from the document Nos.12 and 13

produced by the plaintiffs. Thereafter, defendant No.2 without challenging compromise decree in O.S.338/1993, has filed another suit in O.S.7295/2002. The said suit came to be dismissed for non prosecution. The plaintiffs of the said suit filed Miscellaneous Petition No.850/2007 for restoration of O.S. 7295/2002. In view of continuous intervention of defendant No.2 in peaceful possession and enjoyment of the suit schedule properties, plaintiffs have filed O.S.496/2008 against defendant No.2 and others. The said suit ended in compromise which is evidenced from documents produced by the plaintiffs at document Nos.16 to 20. Therefore, Miscellaneous Petition No. 850/2007 in view of compromise between plaintiffs and defendants in O.S.496/2008 has become infructuous. In view of compromise between plaintiffs and defendants in O.S.496/2008, the plaintiffs have executed re-conveyance deed in favour of defendant No.2 on 22.1.2011 and 21.12.2010. The said fact can be evidenced from the document Nos.21 to 24 produced by the plaintiffs along with the suit.

9. The defendant No.2 after obtaining the said properties by virtue of reconveyance deed referred above executed by the plaintiffs, has entered into Joint Development Agreement with M/s. Abhiman Enterprises by way of registered sale deed and the same can be evidenced from documents Nos.25 and 26 produced by the plaintiffs. When that being the factual possession with regard to suit schedule property, the defendants in collusion with each other filed Misc. Petition No. 274/2014 before the Prl. City Civil & Sessions Judge, Bengaluru seeking permission to enter into Joint Development Agreement in respect of suit schedule properties. The Court has accorded permission for entering the Joint Family Agreement.

10. Now on the basis of order passed by this Court in Misc.Petition No.274/2014, the defendant No.1 being the G.P.A. holder of defendant No.2 and 3 wants to implead the Trust as a party to the suit since the suit schedule properties are the properties belonging to the

Trust. The plaintiffs have contended that the Trust created for thirty years under a Registered Settlement Deed from 29.10.1969 to 29.10.1999. The Trust after the said period have power to sell the suit schedule properties. The plaintiffs have purchased the schedule 'A' and 'B' properties from Maqsood and Maqdoom Beneficial Trust represented by its Trustees late Mehmood Ali and Mrs.Tahera Mehmood Ali in view of Settlement Deed. The same has been accepted and acted upon by the defendants in the earlier proceedings as referred above. However, the applicant/defendant under I.A.No.III claims that the Trust is not dissolved and the Trust cannot have any individual right to alienate the suit properties in favour of the plaintiffs. This issue has never been raised by defendant Nos.2 and 3 in earlier proceedings at any point of time and they have happily entered into compromise in the earlier suit proceedings referred above. It is also equally pertinent to note that the defendants have made counter claim only with respect to six properties sold in favour of plaintiffs covered under 'A'

schedule. They have not made any counter claim with regard to properties covered under 'B' schedule which were purchased by the plaintiffs from defendant No.2 and 3. The said alienations have never been challenged and the sale deeds have not been set-aside by any competent court as on today. The plaintiffs in the present suit have challenged the G.P.A. and Joint Development Agreement executed by defendant No.2 and 3 in favour of defendant No.1 dated 6.8.2014. Therefore, now the defendants want to rake up the issue of suit properties being the Trust property and it was not dissolved according to law. The said fact has never been challenged by defendant Nos.2 and 3 when the properties were being sold to the plaintiffs or in any subsequent proceedings as referred above. Therefore, in my considered opinion the applicant/ defendant seeking impleadment of Trust as party to the suit is only with an intention to create more complications in proceedings of the suit rather than the interest of Trust, as according to them the Trust is still in existence and has not been dissolved in accordance with

law. Therefore, in my opinion, looking to the relief claimed by the plaintiffs and the counter claim of defendants, the trust is neither necessary nor proper party to adjudicate the claim between the plaintiffs and defendants. Consequently, Point No.1 is answered in the ***Negative.***

11. **Point No.2:** In view of the reasons assigned while dealing with point No.1 as above, I proceed to pass the following;

ORDER

I.A.No.III filed by the defendants
under Order I Rule 10 r/w Sec. 151 of
C.P.C. is hereby dismissed.

(Dictated to the Judgment Writer, computerized by him, the same is corrected, signed and then pronounced by me in the open Court on this the 2nd day of March, 2021).

(ANIL B. KATTI)
Principal City Civil & Sessions Judge,
Bengaluru.