

Orders on application filed
under Order 1 Rule 10(2) read with section 151 of
CPC

This application filed by the LRs of the plaintiff under Order 1 Rule 10(2) read with section 151 of C.P.C., praying for an order to permit them to bring the proposed defendant as defendant No.23 in the interest of justice and equity.

2. The LRs of plaintiff No.1(d) has filed affidavit along with this application, wherein he has stated that they have filed the suit against the defendants for the relief of partition and separate possession in respect of suit properties. During the pendency of the said suit the proposed defendant No.23 have clandestinely have made an interference with item No.1 of the suit property to made illegal construction over the item No.1 of the suit property and raised a super structure built and night and day through men and machinery have construction over the 1st item of the suit property and now start the Mother Hood Hospital. Further the LRs of the plaintiff No.1(d) has stated that, the said proposed defendant No.23 might have made an illegal construction over 1st item of the suit property, even though the proposed defendant No.23 have no

manner of right, title and much less possession over the suit property. The said suit properties is joint family properties of the plaintiff and defendants No.1 to 7. The said illegal acts made by the proposed defendant No.23 dated 20.04.2018 he has questioned about the illegal construction made by the proposed defendant No.23 but the said proposed defendant No.23 have given evasive replies and not stated anything about the alleged title by the proposed defendant No.23. Further the LRs of the plaintiff No.1(d) has stated that, thereafter he has immediately approached the jurisdictional police but police have failed to take any action against the proposed defendant No.23 and police is directed him to approach to civil Court for seeking necessary reliefs. The said proposed defendant No.23 is necessary party for adjudicating the matter effectively, sincerely and judiciously that too more comprehensive relief of partition in the said suit. If the application is allowed no prejudice would be caused to the other side, if the application is not allowed, he will suffer irreparable loss and injustice. Hence, the LRs of the plaintiff prays for allowing of the above application.

3. The proposed defendant No.23 has not filed any objection to the above said application.

4. Now, the point that arises for my consideration are:

“Whether the LRs of the plaintiff has made out sufficient grounds for allowing of this application?”

5. Heard arguments. No arguments addressed by the proposed defendant No.23. After hearing the parties and considering the relevant materials on record, my findings on the above point is in the NEGATIVE for the following:

REASONS

6. From the materials on record it is clear that the plaintiffs have filed this suit against defendants for partition and separate possession in respect of the suit schedule properties. The LRs of the plaintiff has stated that, the proposed defendant No.23 have clandestinely have made an interference with item No.1 of the suit property to made illegal construction over the item No.1 of the suit property and raised a super structure built and night and day through men and machinery have construction over the 1st item of the suit property and now start the Mother Hood Hospital. The LRs of the plaintiff has not produced any documents to show that the proposed defendant No.23 has constructed the building in the item No.1 of the suit schedule property as contended by them. Further the LRs

of the plaintiff has not produced any documents to show that, in what capacity the said proposed No.23 has constructed the building in item No.1 of the suit schedule property as contended by them. In the facts and circumstances of the case the LRs of the plaintiff has not made out sufficient grounds for allowing of this application. Therefore, the application filed by the LRs of the plaintiff does not merit for consideration and the same is liable to be rejected. Accordingly, I answer the above point in the NEGATIVE. In the result, I proceed to pass the following:

ORDER

The application filed by LRs of the plaintiff under Order 1 Rule 10(2) read with section 151 of C.P.C. is hereby rejected.

No order as to costs.

IX Addl. City Civil & Sessions Judge,
Bangalore.