

IN THE COURT OF THE XXXIV ADDITIONAL CITY
CIVIL AND SESSIONS JUDGE, BENGALURU

Dated this the 13th day of August, 2018

Present :-

Sri.Shivanagouda, B.Com. LL.B., (Spl.)
XXXIV Addl. City Civil & Sessions Judge,
Bengaluru.

O.S. NO.8114/2005

Plaintiffs :- Sri.Narayanappa and others
V/s

Defendants :- Sri. Thayappa and another

PARTIES IN I.A.VIII

Applicants :- Sri.Narayanappa and others
V/s

Respondents :- Sri.Thayappa and another

* * * * *

ORDER ON I.A.

1. Advocate for applicants/plaintiffs has filed application under Order 1 Rule 10(2) r.w.s. 151 of C.P.C. praying to permit them to implead Sri.Richard Miranda, Mrs.Laetitia Miranda,

Sri.Lionel R.Bayer, Mrs.Jacqueline Bayer, Mr.Francis Machado, Mrs.Honora Faitma Joan Machado, Sri.Noel Gerarol Machado, Smt.Veena Vilas Kowjalgi, Sri.Ranjith Naveen Tellis, Smt.Noreen Mary Magdalene Pinto, Sri.James, Mr.Oswald Jerald Francis Pinto and Mrs. Gretta Pinto as defendants No.16 to 28 since they are necessary parties for the effective adjudication of the disputes in the suit.

2. In support of the application plaintiff No.3 has sworn to an affidavit stating that himself and his brothers have filed this suit for partition and separate possession of 4/5 shares in respect of his joint family property bearing Sy.No.74/3, measuring 3 acres 6 guntas of Horamavu village against his eldest brother i.e., first defendant herein and others. He has further sworn that his brother i.e., the first defendant in collusion with the strangers created fictitious documents independently without consulting him. He has further sworn that the proposed defendants have obtained some fictitious document from first defendant claiming a non existing property and the proposed defendants have filed a suit for bare injunction against applicant and also against his brothers in O.S.5588/2011 to O.S.5595/2011 on the file of this Hon'ble court in respect of non existing property and there is no mention about

Sy.No. and to avoid all complications and multiplicity of proceedings the proposed defendants are necessary in this suit and prayed to allow the application.

3. Proposed defendant Nos.25 and 26 have filed objections on 3/7/2017 and contended that plaintiffs have not served the copy of the plaint for the proposed defendants to answer the disputed facts raised by them. They have further contended that the conveyance of property in favour of the proposed defendants has taken place on 25/7/1995 and the application to implead the proposed defendants is filed after more than twenty years, which is not maintainable and it does not reflect cause of action against the proposed defendants and prayed to dismiss the application.

4. Heard arguments.

5. The point that arises for my consideration is :-

Whether the application filed under Order I Rule 10(2) of C.P.C. deserves to be allowed?

6. My answer to the above point is in the negative for the following :-

REASONS

7. This suit is filed by the plaintiffs against the defendants for effecting partition of the suit schedule property by allotting 4/5th shares of the plaintiffs jointly and put them in separate possession of their joint share out of the suit schedule property and for other reliefs. The suit schedule property is an agricultural property bearing Sy.No.74/3, measuring 3 acres 6 guntas including karab situated at Horamavu village, K.R.Puram Hobli, Bangalore East Taluk.

8. Applicants have filed this application to implead the members mentioned supra as defendants No.16 to 28. In the affidavit sworn by the applicant no where the applicant has mentioned as to which are the properties purchased by the proposed defendants from the first defendant. In para No.5 of the affidavit he applicant has mentioned the proposed defendants have filed a suit for bare injunction against him and other plaintiffs in O.S.5588/2011 to O.S.5595/2011. Respondents/ proposed defendants No.25 and 26 in their objections have not mentioned the details of properties purchased by them. They have contended that the present application is filed after twenty years of filing of the suit. In the absence of proper pleadings in the application

supported by evidence, the applicants have not made out a good ground to allow the application. Accordingly, I answer the Point in the negative and proceed to pass the following :-

O R D E R

Application filed by the applicants under Order I Rule 10(2) r.w.s. 151 of C.P.C. is hereby dismissed on payment of cost of Rs.500/- payable by the applicants/plaintiffs to the respondents/defendants.

(Dictated to the Judgment Writer directly on computer, typed by him, revised by me and after corrections pronounced in the open court on this the 13th day of August, 2018.)

(SHIVANAGOUDA)
XXXIV Addl. City Civil & Sessions Judge,
Bengaluru.