

KABG040028392018



ORDERS ON I.A.No.III FILED UNDER ORDER I RULE 10(2)
OF CODE OF CIVIL PROCEDURE

Counsel for plaintiffs filed an application under Order I Rule 10(2) of Code Civil Procedure seeking to implead the proposed defendant No.2 in this suit.

2. In the affidavit annexed to the application, the plaintiff No.1 on her behalf and also on behalf of plaintiff No.2 has stated that the defendant No.1 entered into an agreement with her husband on 16/07/2007 agreeing to sell 8 Gunthas out of his land R. S. No. 254A/4 of Marihal village. As the defendant No.1 did not execute registered sale deed in terms of the agreement, plaintiffs have filed the present suit for specific performance of contract against him. The defendant No.1 has sold an area measuring 14 gunthas of suit land to the proposed defendant No.2 Mallikarjun Bapusaheb Jamadar under sale deed dated 26/07/2018. When they filed the suit, they were not aware of the said sale deed and recently the said fact came to their knowledge and immediately they applied for certified copy of sale deed and obtained the same and filed this application. The presence of defendant No. 2 is necessary for the proper

and effective adjudication of the case. There is no deliberate negligence on their part and it is very much necessary to implead the said person as defendant No.2 in this suit. Hence prayed to allow the application.

3. Counsel for proposed defendant No.2 filed his objections and contended that the contents of affidavit are not satisfactory to grant any relief. The defendant No.2 is not at all related to the alleged dispute between the plaintiff and defendant No.1 in any manner. The suit property is purchased by proposed defendant No.2 for valuable consideration and he is the bonafide purchaser and not at all relevant party to this suit. It is further stated that it is the inter-se dispute between the plaintiff and defendant No.1 and this defendant No.2 is not at all necessary party to this suit. Hence, prayed to reject the application with costs.

4. Heard the counsel appearing for the plaintiff and proposed defendant No.2.

5. The following points would arise for my consideration:

1. Whether the plaintiffs have made out grounds to allow this application?
2. What order?

6. My answer to above points are as under:

Point No.1: In the affirmative

Point No.2: As per final order for the following:

REASONS

7. Point No.1: Counsel for plaintiff argued that the proposed defendant No. 2 is necessary party to the suit and without impleading him, the suit is not maintainable and prayed to allow the application. At the outset it is very much necessary to reiterate the provision of law as contemplated under Order I Rule 10 (2) of Code of Civil Procedure which reads thus:

(2) Court may strike out or add parties:

The Court may at any stage of the proceedings, either upon or without the application of either party and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out and that the name of any person who ought to have been joined, whether as plaintiff or defendant or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

A plain reading of the above said provision of law clearly reveals that it is necessary to add parties in order to

enable the Court to arrive at effective and complete adjudication of the matter.

8. At this point it is essential to discuss who is a necessary party:-

“ A necessary party is a person who ought to have been joined as a party and in whose absence no effective decree could be passed by the Court. If a necessary party is not impleaded, the suit itself is liable to be dismissed.”

9. The plaintiff has stated that the proposed defendant No.2 is the necessary party and prayed to implead him as defendant No.2 in this suit. Since the suit is filed for the relief of specific performance and it is alleged that the proposed defendant No. 2 has purchased the suit property, this Court feels it appropriate to allow the plaintiff to implead the proposed defendant No.2 in this suit for the proper and effective adjudication of the matter and in order to avoid multiplicity of proceedings. Hence I answered **Point No. 1 in the Affirmative.**

10. Point No .2: For the above discussed reasons to point No.1, I proceed to pass the following:

ORDER

The I.A.No.3 filed by the petitioners under Order I Rule 10(2) of Code of Civil Procedure is hereby allowed.

II Addl. Civil Judge & JMFC
Belagavi.

**ORDERS ON I. A. No. IV FILED UNDER ORDER VI RULE 17
OF CODE OF CIVIL PROCEDURE**

This application is filed by the plaintiffs Under Order VI Rule 17 of Code of Civil Procedure seeking permission of the court to amend the plaint as per schedule of amendment annexed to the application as hereunder:

Para No.6A :- The defendant No.1 has sold 14 gunthas of land out of R. S. No. 254A/4 to defendant No.2 under registered sale deed dated 26/07/2018 behind the back of plaintiffs. The 14 Gunthas of land sold to defendant No.2 includes the suit property measuring 8 Gunthas. The defendant No.1 did not disclose the fact of sale of suit land to plaintiffs when the plaintiffs approached him on 14/10/2018 and requested him to execute the sale deed in terms of agreement dated 16/07/2007. At that time the defendant No.1 said that there is no urgency in executing the sale deed as they are in possession of the same. The

defendant No.1 lied before the plaintiffs. He did not tell regarding the sale to defendant No.2. After that the plaintiff issued legal notice dated 16/10/2018 calling upon defendant No.1 to execute sale deed in their favour within 7 days of receipt of the notice. The defendant No.1 refused to take notice. Thereafter the plaintiffs filed top numbered suit against the defendant No.1. The plaintiffs submit that the sale deed executed by the defendant No.1 in favour of defendant No.2 including the suit land measuring 8 Gunthas under sale deed dated 16/07/2018 is illegal and void. Under the suit agreement the defendant No.1 handed over the possession of suit land to Shri Parappa Sannappa Betageri who is the husband of plaintiff No.1 and father of plaintiff No.2. The sale deed executed by defendant No.1 infavour of defendant No.2 to the extent of 14 Gunthas which is inclusive of 8 Gunthas of suit land is not binding on the plaintiffs right over the suit land measuring 8 Gunthas by virtue of sale agreement dated 16/07/2007.

2) In the cause title before the name of defendant the figure “1” may be permitted to be added.

3) In the plaint wherever the word defendant is appearing may be permitted to be deleted and in its place the word “defendant No.1” may be permitted to be substituted.

4) In prayer column after the Prayer No. 'b' a new prayer 'bb' – "Holding that sale deed dated 26/07/2018 executed by defendant No.1 in favour of defendant No.2 including the suit land measuring 8 Gunthas is not binding on the plaintiffs right over the suit land measuring 8 Gunthas" be permitted to be added.

2. It is stated in the affidavit annexed to the application that the defendant No. 1 has sold 14 guntas in R.S. No. 254A/4 including suit property and in view of sale, it is necessary to incorporate the said facts in the suit by way of amendment. Further, in view of impleadment, the rank of parties also changes and the proposed amendment will not change the nature of the suit or cause of action and no loss or hardship will be caused to the other side if the application is allowed. Hence prayed to allow the application.

3. Counsel for defendant filed his objections to the said I.A. stating that plaintiff has got created false grounds to suit his own claim. It is false to state that this defendant has sold the property behind the back of plaintiff. Further it is false to state that the plaintiffs approached the defendant and requested to execute the sale deed as per the agreement dated 16/07/2007. It is important to note that there is no agreement as stated by the plaintiffs. Further it is important to note that defendant has not executed any agreement of

sale as stated by the plaintiff and it is false to state that the plaintiff is in possession of the suit property. It is further stated the legal notice is issued to the defendant and same is served upon him. Further it is false to state that the defendant has refused the notice. The defendant No.2 is not necessary party and only to harass he is being included in this suit. That the entire contents of the agreement of sale dated 16/07/2007 are denied so question of purchasing 8 Gunthas by the plaintiff does not arise at all. Hence, amendment sought as per para No.6A are all got created to suit the claim of plaintiff that the plaintiff is having no right, claim, ownership over the suit property. Hence prayed to dismiss the application with costs.

4. Heard the counsel appearing for the plaintiff and proposed defendant No.2.

5. The following points would arise for my consideration:

1. Whether the plaintiffs have made out grounds to allow this application?

2. What order?

6. My answer to above points are as under:

Point No.1: In the affirmative

Point No.2: As per final order for the following:

REASONS

7. Point No.1: Perused the materials available on record. On perusal of the same, it reveals that the Plaintiffs have filed this suit for the relief of specific performance of agreement dated 16/07/2007 against the defendant and during the pendency of the suit, the defendant sold the suit property in favour of defendant No. 2 on 26/7/2018 and the said fact came to the knowledge of the plaintiffs recently and they obtained certified copy of sale deed on 18/3/2019 and filed this application. In the present suit, trial has not yet commenced and the suit schedule property has been alleged to be sold in favour of defendant No. 2. As such this court opines that if the proposed amendment is allowed, it will neither alter the nature of the suit nor change the subject matter of the suit. The burden of establishing the facts as stated in the proposed amendment is upon the Plaintiffs. In order to avoid multiplicity of proceedings and for proper adjudication of the matter in controversy, the present application filed by the Plaintiffs needs to be allowed. Hence, the court is of the opinion that the reasons assigned in the application as well as materials available on record is sufficient and acceptable. Hence I answered **Point No.1 in the Affirmative.**

8. Point No .2: For the above discussed reasons to point No.1, I proceed to pass the following:

ORDER

The I. A. No. IV filed by the Plaintiffs Under Order VI Rule 17 of CPC is hereby allowed.

Counsel for plaintiffs is directed to carry out the amendment and to file amended plaint.

Call on: **11/11/2021**

Sd/-

II Addl. Civil Judge & JMFC
Belagavi.