

IN THE COURT OF THE PRL. CIVIL JUDGE AND J.M.F.C.,
ATHANI AT: ATHANI.

Present: Jagadeesh Biserotti.,
B.A., LL.B.(Spl.).
Prl. Civil Judge and JMFC, Athani.

Dated this day 07th August, 2023.

O.S. No. 115/2019

1. Sri.Malappa S/o.Sangappa Udyangoal @ Kurubar,
Age: 30 Years, Occ: Agri.,
R/o. Badachi, Tq: Athani, Dist: Belagavi and others.

(Plaintiffs by learned Sri. K.H.A., Adv.)

...Plaintiffs

V/s

1. Sri.Lakkappa S/o.Gangappa Kurubar,
Age: 58 Years, Occ: Agriculture,
R/o. Badachi, Tq: Athani,
Dist: Belagavi.

(By learned Shri.S.R.P., Adv.)

....Defendant

I.A. No. II

1. Sri.Malappa S/o.Sangappa Udyangoal @ Kurubar and others.

.....Applicant/plaintiffs

v/s.

1. Sri.Lakkappa S/o.Gangappa Kurubar.

....Opponent/Defendant

ORDER ON IANo. II. FILED U/ORDER 1 RULE 10(2)
R/W.SECTION 151 OF C.P.C BY THE PLAINTIFFS

1. The learned counsel for the plaintiffs has filed an I.A.No.II U/o.1 Rule 10(2) R/w.Sec.151 of CPC seeking permission of the court to implead the proposed defendant No.2 in the suit. The application is supported with an affidavit of the plaintiff No.1.
2. In the affidavit accompanied to I.A. No.II, it is stated that the plaintiffs have filed the suit against the defendant for the relief of declaration and permanent injunction in respect of the property R.S.No.67/2 situated at Badachi village. The defendant has sold his property R.S.No.67/3 which is situated towards eastern side of the property of the plaintiffs. The defendant had sold his property R.S.No..67/3 to the other person, now proposed defendant No.2 has purchased the said property on 03-08-2022, hence the proposed defendant No.2 is proper and necessary party to the suit to adjudicate the matter between the parties. If the

application is allowed, no loss or hardship would cause to the proposed defendant No.2. If the application is not allowed, the plaintiffs will be put to injustice. On these reasons, plaintiffs have prayed to allow the application.

3. After service of notice on I.A.No.II on the proposed defendant No.2, he has appeared through his learned counsel and he has filed his objections to I.A.No.II.
4. In the objections of the IA.No.II, it is contended that the plaintiffs have filed IA.No.2 to drag the matter and harass the proposed defendant No.2 and the application is not maintainable. The reasons stated in the affidavit accompanied to IA.No.II are not correct. It is denied that the defendant No.1 has sold the property R.S.No.67/3 to the proposed defendant No.2 and the proposed defendant No.2 is necessary party to the suit. The plaintiffs have not aware the said sale transaction of the property R.S.No.67/3 and they have filed the present suit blindly.
5. It is asserted that the defendant No.1 has sold his property R.S.No.67/3 measuring 2.29 acres to one Sri. Nishant Bahaddur Dalawai as per the registered sale deed dated 2-07-2020,

accordingly M.R.No.H1/2020-21 has been effected, later, the said Sri. Nishant Bahaddur Dalawai has sold the very same property to one Sri. Praveenkumar Ratnakumar @ Ratanachan Savadatti through registered sale deed dated 18-12-2020 and M.R.No.H55/2020-21 has been effected. The said Sri.Praveenkumar Ratnakumar @ Ratanachan Savadatti has sold the very same property to one Sri.Shivappa Siddappa Mekkalaki through registered sale deed dated 17-06-2022 and M.R.No.H131/2021-22 has been effected. The said Sri.Shivappa Siddappa Mekkalaki has sold the very same property to the proposed defendant No.2 by way of registered sale deed dated 03-08-2022 for Rs.9,60,000/-. Hence, the proposed defendant No.2 is the owner of the said property. The proposed defendant No.2 has never disturbed to the land of the plaintiffs and he never denied the title of the plaintiffs. Therefore, the application filed by the plaintiffs is liable to be dismissed.

6. It is asserted that the plaintiffs have stated in the plaint that on 21-01-2019 cause of action is arisen against the defendant No.1, not against the proposed defendant No.2. Therefore the application is not maintainable. The proposed defendant No.2 is

not necessary party to the suit. On these assertions the proposed defendant No.2 has prayed to reject the application.

7. Both side learned counsels have submitted their arguments. Heard the arguments by both side and perused the records.
8. The following points arise for consideration of this court.

POINTS

1. Whether the plaintiffs have made out grounds that the proposed defendant No.2 is proper and necessary party to adjudicate the matter in dispute between the parties?
 2. Whether the plaintiffs have made out grounds that they are entitled for the relief as sought in I.A.No.II?
 3. What order ?
9. Findings to the above said points are as follows:

Point No. 1 : In the Affirmative.

Point No. 2 : In the Affirmative.

Point No. 3 :As per final order;

REASONS

10. **Points No.1 :-** Since these points are interconnected with each other to avoid repetition of facts and findings, these points are taken together for common discussion.
11. The plaintiffs have filed the suit against the defendants for the relief of declaration and permanent injunction in respect of property R.S.No.67/2 situated at Badachi village as shown “ABCD” in the plaint hand sketch. The plaintiffs have contended that the present defendant is interfering and obstructing to the peaceful possession and enjoyment of the suit property of the plaintiff and trying to encroach the suit property of the plaintiffs. Hence they filed the suit.
12. The proposed defendant No.2 has contended that in fact the present defendant has not sold the property R.S.No.67/3 to him, but one Sri.Shivappa Siddappa Mekkalaki has sold the property R.S.No.67/3 as per the registered sale deed dated 03-08-2022.

The proposed defendant No.2 has not disputed that earlier suit property was belonging to the present defendant and location of the property R.S.No.67/2 and 67/3. Thus, it is not in dispute between the plaintiffs and proposed defendant that the suit property is situated towards eastern side of the property of R.S.No.67/3, which is belonging to the proposed defendant. The learned counsel for the proposed defendant No.2 has argued that there is no cause of action to implead the proposed defendant No.2, since the proposed defendant No.2 has not interfered to the possession and enjoyment of the suit property of the plaintiffs and he has not denied the title of the plaintiffs. Hence, the application filed by the plaintiffs is not maintainable.

13. It is relevant to note that of course, the cause of action is necessary to file the suit against the parties. However, under facts and circumstances of the case, if the party is necessary or formal party to adjudicate the rights of the parties, party can implead the necessary and proper party in the suit. In this case, since the proposed defendant No.2 has purchased the property, which was originally belonging to the present defendant, it appears to the court that the proposed defendant No.2 is proper and necessary party to the suit. It is relevant to note that as per the case of the

plaintiffs, the defendant denied the title of the plaintiffs over the suit property and interfering to the possession and enjoyment of the suit property of the plaintiffs. The proposed defendant No.2 is the successive owner of the suit property not by way of succession, by way of purchase of the property R.S.No.67/3. When the original owner of the property R.S.No.67/3 denied the title and interfered to the possession and enjoyment of the suit property of the plaintiffs, subsequent purchase of the suit property is necessary and proper party to the suit to decide the rights of the party.

14. This Court has relied decision in the case of ***Amith kumar Shaw and another V/s Ferida Khatoon and another***, reported in 2005(5) KCCR 1834 (SC) , wherein it is held and observed as under,

The object of Order 1 Rule 10 is to discourage contests on technical pleas, and to save honest and bona fide claimants from being non-suited. The power to strike out or add parties can be exercised by the Court at any stage of the proceedings. Under this Rule, a person may be added as a party to a suit in the following two cases: (1) When he ought to have

been joined as plaintiff or defendant, and is not joined so, or (2) When, without his presence, the questions in the suit cannot be completely decided.

The power of a Court to add a party to a proceeding can not depend solely on the question whether he has interest in the suit property. The question is whether the right of a person may be affected if he is not added as a party. Such right, however, will include necessarily an enforceable legal right.

Under Order XXII, Rule 10, no detailed inquiry at the stage of granting leave is contemplated. The Court has only to be prima facie satisfied for exercising its discretion in granting leave for continuing the suit by or against the person on whom the interest has devolved by assignment or devolution. The question about the existence and validity of the assignment or devolution can be considered at the final hearing of the proceedings. The Court has only to be prima facie satisfied for

exercising its discretion in granting leave for continuing the suit.

As already noticed, the Court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests. The Court has held that a transferee pendente lite of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that interest. He is entitled to be impleaded in the suit or other proceedings where the transferee pendente lite is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case.

15. This Court has relied decision in the case of **Sri. M. Narayana and another V/s Smt. Ramakka and others**, reported in 2016(2) KCCR 1300, wherein it is held and observed as under,

5. *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 at all by the Court. If a necessary party is not impleaded, the suit itself is*

liable to be dismissed. A proper party is a party who though not a necessary party is a person whose presence would enable the Court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the Court has no jurisdiction to implead him against the wishes of the plaintiff.

6. *It is equally settled that the power of a Court to add a party to a proceeding cannot depend solely on the question whether he has interest in the suit property. The question is whether the right of a person may be affected if he is not added as a party. Such right, however, will include necessarily an enforceable legal right.*

16. This Court has relied decision in the case of **Revanasiddappa V/s Ganga Revanna**, reported in 2010(5) KCCR 3526, wherein it is held and observed as under,

5. *A question as to whether the petitioner is an absolute owner of the suit schedule property can not*

be determined at the interlocutory stage when the specific case of the petitioner that he has a right over the schedule property. The same would have to be agitated and he cannot be declined to be a party in the suit. The affidavit in support of the application discloses that there is a semblance of right of the petitioner that requires to be considered.

17. This Court has gone through the above decisions. The principles stated in the said decisions are applicable to this case. It is relevant to note that when the transactions are taken place in respect of the subject matter of suit property, the party, who is claiming right and interest in respect of the property, which was originally belonging the present defendant, he has to be added, and he is necessary party for proper adjudication of the suit and decide the rights of the parties. If the suit decide, in the absence of the necessary parties, which will affect the rights of the party, who claims right over the property and it will create multiplicity of proceedings. If proposed defendant is not impleaded in the present suit and if the plaintiffs succeeds in this suit, again the binding nature of the said sale transactions will be not answered and which may lead for further litigation between the parties.

under these facts and circumstance, the plaintiffs have made out the grounds that the proposed defendant is proper and necessary party to the suit for adjudication of this suit. *Upon perusal of all the materials placed before the court, this court is of the opinion that the proposed defendant No.2 is proper and necessary party to the suit to adjudicate the rights of the parties. The objections contention taken by the proposed defendant No.2 are not acceptable, at this stage before impleading the proposed defendant No.2 in the suit and to reject the I.A.No.2. In view of the above reasons and discussions, the plaintiffs have made out grounds to show that the proposed defendant No.2 is proper and necessary party to adjudicate the matter and to grant the relief as sought in the IA.No.II. Hence, this court answers **Point No.1 & 2 in the Affirmative.***

18. **POINT No.3:-** In view of findings on above points and having regard to the facts and circumstances of the case, this court proceeds to pass the following:-

ORDER

I.A.No.II filed U/o 1 Rule 10 (2) R/W. Section 151 of C.P.C filed by the plaintiffs is hereby allowed.

The plaintiffs are permitted to implead the proposed defendant No.2 as party to the suit. The plaintiffs are hereby permitted to carry out necessary amendment in the plaint and furnish amended plaint.

No order as to cost.

(Dictated to Stenographer, transcribed and typed by her, corrected and then pronounced by me in the open court this the **07th day of August, 2023**).

[Jagadeesh Biserotti]
Prl.Civil Judge and J.M.F.C.,
Athani.

(Order pronounced in the open court, vide separate order)

ORDER

I.A.No.II filed U/o 1 Rule 10 (2) R/W. Section 151 of C.P.C filed by the plaintiffs is hereby allowed.

The plaintiffs are permitted to implead the proposed defendant No.2 as party to the suit. The plaintiffs are hereby permitted to carry out necessary amendment in the plaint and furnish amended plaint.

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Prl.Civil Judge and J.M.F.C.,
Athani.