

14-12-2020

OS 137-2013

ORDERS ON IA NO.4

The advocate for Plaintiffs has filed this application i.e., I.A. No.4 under order 1 Rule 10(2) read with section 151 of the code of civil procedure, to implead the below proposed Defendants as Defendants 6 to 8 in the above case, in the interest of justice and equity.

2) The proposed Defendants 6 to 8 are :-

- 6) Shri. Sadashiv Laxman Pujari
Aged about 62 Years,
Occ: Agricultural, R/o Examba,
Chikodi Taluk, Belagavi District
- 7) Shri Shivaraj S/o Kumar Chitale,
Aged 26 Years, occu: Agriculture,
R/o Examba, Chikodi Taulk
Belagavi District
- 8) Shri. Megaraj S/o Kumar Chitale
Aged 26 Years, occu: Agriculture,
R/o Examba, Chikodi Taulk
Belagavi District

3) In the affidavit annexed to the application, the Plaintiff No.2 sworn to an affidavit, by stating

that, they have filed this suit for the relief of declaration and permanent injunction against the Defendants in respect of the suit property bearing R. S. No. 384/1 of Examba Village Measuring 1 Acres 29 Guntas of land.

4) It is asserted in the affidavit that, after service of notice from this court, the Defendants have not appeared before the court, hence this court was pleased to place them *ex parte* and posted the matter for Plaintiff's Evidence. Thereafter, the matter scheduled for Judgment. In the meantime, before pronouncing judgment, the Defendant No.1 has appeared through her counsel and filed her written statement denying all the averments found in the Plaint and raised the maintainability of the suit before this court in view of section 136(2) of Karnataka Land Revenue Act.

5) It is asserted in the affidavit that, at the time of filing the suit, the proposed Defendants 6 to 8 names were not appeared in the suit land R of R extract, therefore, they have not made them as parties to the suit, however, recently they have obtained the R of R extract of suit survey number and obtained the certified copy of the sale deeds then they came to know that, the proposed

Defendants 6 to 8 have purchased an area of 20 Guntas in R.S. No. 384/1 of Examba Village and proposed Defendant No. 7 & 8 have jointly purchased the illegally an area of 20 guntas of land jointly in R.S No. 384/1 of Examba Village from the 2nd Defendant. In fact the Defendant No.2 was not the owner to the extent of 1 acre of land although, he was sold illegally to these proposed Defendants. Therefore, the presence of proposed Defendants 6 to 8 before this court is necessary in order to enable the court effectively and completely to adjudicate upon and settle all the portion involved in the suit. Hence prays to allow the application.

6) After filing of the application, notice of application order to be issued to the proposed Defendants, though notice of I.A. duly served to the Proposed Defendants, they have not appeared before the court, hence this court pleased to note the absence of proposed defendants. However the defendant No.1 herein resisted the application by contending that, the Plaintiffs have obtained the Temporary Injunction order for non-alienation and the said orders are kept in custody of Sub-Registrar, Sadalaga and there is no chance of alienation at all. Only with an intention to dodge

the case, the Plaintiffs have filed this application and the Plaintiff remained absent since many years. Hence prays to reject the application.

7) Heard

8) Now the points that arise for determination by this court are as follows:-

POINTS

- 1) Whether the proposed Defendants 6 to 8 are necessary parties to the suit to adjudicate the question involved in the suit effectively and completely ?
- 2) What order ?

9) The findings of this court to the above points is as under,

Point No.1: In the Affirmative

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

REASONS

Point No.1 :

10) The learned counsel for the Plaintiffs argued before the court that, the 2nd defendant was not the owner to the extent of 1 acre of

land in R.S. No. 384/1 of Examba Village, However he has sold the property to the proposed Defendants 6 to 9 under two sale deeds an extent of 20 Guntas of land each to the Proposed Defendant No.7, 8 and Proposed Defendant No. 6 respectively. Further it is argued by the learned counsel for the Plaintiffs that, at the time of filing the suit, the names of these proposed Defendants not incorporated in the R of R of R.S. No. 384/1. Recently the Plaintiffs have obtained the RTC extract of the R.S. No. 384/1 of Examba Village then, they found the names of proposed Defendants in respect of R. S. No. 384/1 of Examba. Hence filed this application. As such prays to allow the application in the interest of justice and equity.

11) On the other hand, the Learned counsel for the Defendant No.1 argued before the court that, the Plaintiffs obtained the Temporary Injunction order for non-alienation of suit property and the said orders are kept in the custody of the Sub-Registra, Sadalada and there is no chance of alienation of suit property. The Plaintiffs only with an intention to dodge the case has filed this application. Hence prays to dismiss the application.

12) According to the Plaintiffs the 2nd defendant without having any right, title or interest over the 1 Acre of land in R.S. No. 384/1 has sold the property to the proposed Defendants under two separate registered sale deeds prior of filing of the suit, the said fact came to know by the Plaintiff recently after obtaining the RTC. Hence the proposed defendants are necessary parties to determine the issues involved in this suit, if they are not impleaded the right of the plaintiffs will be lost hence prays to allow the application.

13) Perused the materials available on records, when the matter scheduled for plaintiff's evidence, the instant application has been filed by the Plaintiffs. The Plaintiffs have also produced the certified copies of the two registered sale deeds dated: 11/06/2012 and 22/01/2013 executed by 2nd Defendant herein in favour of proposed defendants in respect of R.S. No. 384/1 of Examaba Village. i.e, much prior to filing of the suit by the Plaintiffs. In the affidavit annexed to the application, the Plaintiff No. 2 stated that, she has recently obtained the R of R of suit property and found the names of proposed defendants. Exact date of obtaining

the RTC is not mentioned in the affidavit. However, the said documents stated above have been obtained by the Plaintiffs on 18/06/2018 which is reflected in the said documents. i.e, one year before filing the instant application.

14) However, though the plaintiff has filed this application belatedly he will not be restrained to approach the proper relief from the proper persons, hence it is necessary to know who is necessary parties and proper properties to resolve the dispute in adjudication.

A necessary party :- is one whose presence is indispensable to the constitution of the suit against whom the relief is sought and without whom no effective orders can be passed.

A proper party :- is one, in whose absence an effective order can be passed but whose presence is necessary for a complete and end decision on the question involved in the proceeding. In other words in absence of a necessary party no degree can be passed so far as it relates to the parties

before the court. His presence, however enables the court to adjudicate more effectively and completely

15) In order to determine the question whether a particular party is a necessary party to the proceeding the following requirements is necessary which are;-

- 1) Their must be a right to some relief against such party in respect of a matter involved in the proceeding in question.
- 2) It should not be possible to pass an effective decree in absence of such party

With the above points this court proceed with the facts and circumstances of the case.

16) Admittedly, the plaintiff has filed suit for Declaration against the defendant in respect of suit schedule property. It is the case of the Plaintiffs that the 2nd defendant was not the absolute owner of the suit property has sold the property to the proposed defendants. Hence the proposed defendants are proper parties to the suit.

17) Further, the plaintiff is a dominus litis. He is a best person to judge his interest. It is therefore, for him to choose his opponent from whom he claims relief and this court should not compare him to fight against a person who he does not want to file and from whom he claims relief. As such, point No.1 answered in the Affirmative

Point No.2 :-

18) In view of the reasons assigned above, this court proceed to pass the following,

ORDER

Application filed by the applicant U/O. 1 Rule 10(2) R/W Sec.151 of CPC as IA No.4 by the applicant/plaintiff is hereby allowed with cost of Rs.1,000/-

Advocate for plaintiff is hereby directed to carry out amendment and furnish amended plaint.

Call on 1-1-2021

1st Addl. Civil Judge & JMFC,
Chikodi.

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