

KABG600000242024



IN THE COURT OF THE SENIOR CIVIL JUDGE, HUKKERI.

Before : **Sri, K.S.Rotter**, B.Com. LL.B (Spl),
Senior Civil Judge, Hukkeri.

Dated: this 14th day of October 2024

O S No.10/2024

Plaintiffs: Smt. Shankarewwa Basappa Yaragatti and 2 others
V/s

Defendants: Smt. Rajashri Siddappa Dummanavar and others

PARTIES TO I.A No.III.

APPLICANT: Sri Mahesh Dundappa Doddalinganavar
Aged : 41 years, Occ : Agriculture,
R/o. Chikkodi road, Hukkeri,
Tal : Hukkeri, Dist : Belagavi..... Third party.

(By Shri A.M. Hyatagol. Advocate)

V/s

OPPONENT: Smt. Shankarewwa Basappa Yaragatti,
Age: 48 yrs, R/o Agriculture,
R/o Bijaguppi, Tal : Ramadurg,
Dist : Belagavi. Plaintiff.

(By Shri B.V. Hiremath Advocate)

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- i). *Provisioned under which the application is filed* : *IA-III U/Order I Rule 10(2) R/w Sec.151 of CPC*
- ii). *Relief sought for* : *Impleading the parties.*
- iii). *The date on which the Application is filed* : *19.02.2024*
- iv). *Number of the application* : *IA No.III*
- v). *The date on which the objections are filed by the different opponent* : *04.06.2024*
- vi). *The date on which orders were Passed on the said application* : *14.10.2024*

Stage of the suit: For orders on I.A.No.III

(K.S.Rotter)
Senior Civil Judge, Hukkeri

**ORDER ON I.A.III FILED UNDER ORDER 1 RULE 10(2) OF
C.P.C.**

This is an application filed by the third party/applicant under Order 1 Rule 10 (2) R/w Sec.151 of CPC for impleading him as defendant No.8 in this suit.

2. In support of above said application, the applicant Sri. Mahesh Dundappa Doddalinganavar has filed his sworn affidavit and stated that, the plaintiffs have filed the suit for the relief of partition and separate possession against defendants No.1 to 7 in respect of suit land R.S.No.708/9 measuring 5 acres of Hukkeri. The said property originally belonging to Shri Ningappa Bhimappa Dummanavar, Sushila Bhimappa Dummanavar and Smt. Sangeeta Bhimappa Dummanavar. The said Ningappa, his wife Sushila and their son by name Siddappa Ningappa Dummanavar, the wife of another son Bhimappa by name Sangeeta and the wife of Siddappa Ningappa Dummanavar by name Smt. Rajashri have agreed to sell the suit property to the plaintiff for Rs.15,00,000/- and on 05.11.2018 they have executed a registered agreement of sale by receiving earnest money of Rs.10,00,000/- from the plaintiff. Further they have agreed to execute the registered sale deed of said suit property in favour of

plaintiff within 3 years by getting necessary documents and by receiving the remaining balance sale consideration amount. Thereafter, the present applicant has approached the said Ningappa and others for execution of registered sale deed, but they have postponed the same on one or the other reason and thereafter the said Sushila Ningappa Dummanavar died on 17.03.2021 leaving behind her children. Such being the facts, now the plaintiffs only with an intention to give harassment to the plaintiff and colluding with defendants have filed this false suit for partition with intention to compromise the same. The applicant stated that, the present the defendants No.7-Ningappa Dummanavar, his wife, deceased sons and daughters-in-laws/defendants No.1 and 4 have executed agreement of sale in his favour but by suppressing the said fact, they have filed the present suit for partition. Hence, the applicant stated that, his presence in the suit for determination of matter in dispute is just and necessary and he is also necessary party to the present case and if his application is not allowed, he will be put to irreparable loss and hence, he prayed for allowing the application.

3. On the other hand, the above said application is resisted by the plaintiffs by filing their detail objections. In their objections, plaintiffs stated that, the I.A.No.III filed by the 3rd party and affidavits filed in support of the said application are false and not maintainable. The plaintiffs specifically stated that present proposed defendant No.8 is not a family member of the plaintiffs and defendants nor he is having any right, title or interest over the suit properties. Further plaintiffs have not shown any cause of action against the proposed defendant No.8 and he has no right to purchase the entire suit land which is joint family property. If the proposed defendant No.8 has any claim against the defendants, he may file suit for specific performance of contract. Further plaintiffs stated that their mother has not executed an agreement of sale in favour of proposed defendant No.8. Further it is stated that, no issue in respect of the claim of proposed defendant No.8 can be decided in the suit for partition, as such, proposed defendant No.8 is neither necessary party nor proper party to the present suit. Accordingly, plaintiffs prayed for dismissing the I.A.No.III filed by the third party applicant.
4. I have heard the arguments of both sides.

5. The following points arise for my consideration.
1. *Whether it is just and necessary to implead/add the third party/proposed defendant as defendant No.8 in this case for complete adjudication of the matter in dispute?*
 2. *What order?*

6. My findings on the above points are as under:-
1. In the Affirmative.
 2. As per final order for the following:-

REASONS

7. **Points No.1:** Admittedly the plaintiffs have filed this suit for the relief of partition and separate possession against defendants stating that, suit schedule properties are joint family properties of plaintiffs and defendants. It is seen from the records that, upon the service of suit summons, the defendants No.1 to 7 appeared through their respective advocates, but till today they have not filed their written statements. At this stage the applicant/proposed defendant No.8 come with this application U/o 1 Rule 10 CPC for impleading him as proposed defendant No.8 in this case on the ground that, he has agreed to purchase the suit property land R.S No.708/9 measuring

05-00 Acres of Hukkeri its original owners. According to applicant, the defendants No.7-Ningappa Bhimappa Dummanavar, his wife-late Sushila, his deceased son Siddappa and his daughters-in-laws/defendants No.1 and 4 have agreed to sell the suit property for Rs.15,00,000/- in his favour. Accordingly, on 05.11.2018, they have executed a registered agreement of sale in favour of him by receiving earnest money of Rs.10,00,000/- in the presence of the witnesses and agreed to execute the registered sale deed within 3 years by receiving remaining balance sale consideration amount and by getting 11E sketch etc. but now the plaintiffs and defendants colluding with each other and in order to defeat the right of applicant in the suit property have filed this false suit without his knowledge. Hence, applicant stated that, he is a necessary party to the present suit.

8. The advocate for third-party applicants contended that, the present applicant is registered agreement holder of the suit property but plaintiffs and defendants have filed this suit without arraying him as parties. Therefore, present applicant is also necessary parties to the present suit and accordingly prayed for allowing the IA. On the

other hand, the advocate for plaintiffs vehemently canvassed his argument and contended that, the present applicant is no way concerned to the family of plaintiffs and defendants and suit properties. But only to drag the matter, the defendants and applicant colluding with each other have filed this false application, as such the presence of present applicant is not necessary in this case. Hence, he prayed for dismissing the I A.

9. I have perused the IA, objection, pleadings and documents of both parties. It is the contention of the third party-applicant that, the original owner-defendants No.7-Ningappa Dummanavar, his wife, deceased son and daughters-in-laws/defendants No.1 and 4 have agreed to sell the suit land R.S No.708/9 measuring 05-00Acres for Rs.15,00,000/- in his favour executed registered agreement on 05.11.2018 but now the plaintiffs and defendants colluding with each other have filed the suit without his knowledge and without adding him as party in this suit. On the other hand, plaintiffs contended that, the present applicant is no way concerned to the family of plaintiffs and defendants. It is stated that, the applicant is neither a coparcener nor legal heir of the family and plaintiff and

defendant. However, this contention of the plaintiffs cannot be acceptable at this stage, because, in support of this application, the applicant/proposed defendant has produced registered agreement alleged to be executed by the defendants No.7-Ningappa Dummanavar, his wife, deceased son and daughters-in-laws/defendants No.1 and 4. The recitals in sale agreement clearly go to show that, the defendants No.7-Ningappa Dummanavar, his wife, deceased son and daughters-in-laws/defendants No.1 and 4 after executing the agreement of sale have received the earnest money of Rs.10,00,000/- from the plaintiff. Therefore, whether the present applicant is entitle any relief in respect of the suit properties or not? is substantial question to be determined at later stage. For deciding the same full-fledged enquiry required. At this stage, a document shows that, present applicant is registered agreement holder of the suit property. No doubt the present applicant has got a remedy of specific performance of contract but now the plaintiffs filed this suit for partition by including the property, which is subject of the sale agreement. Under such facts and circumstance, if the plaintiffs and defendants have obtained any orders or got settled the suit in the

absence of the present applicant/agreement holder of suit property R.S No.708/9, it will definitely defeat the very right of the applicant in the said suit property, as such, presence of present applicant is necessary for the complete adjudication of matter and his also necessary parties to the present suit. Therefore, from considering all the above, at this stage, I come to the conclusion that, for effective and complete adjudication and for settling all the questions involved in respect of the suit properties of this case, adding of applicant as defendant No.8 is just and necessary. Further by adding the proposed defendant No.8 in the suit will also avoid the multiplicity of proceedings between the parties. This is also save the valuable time of this court. If the application is allowed and permitted the proposed defendant to come on record, no loss and hardship will be caused to the plaintiffs and defendants. On the other hand, if application is not allowed injustice and hardship will caused to the applicant. From considering all these I come to the conclusion that. The applicant has made out sufficient reasons for adding him as defendant No.8 in this suit. Accordingly I answer point No.1 in the affirmative

10. **Point No.2:** For the foregoing reasons, I proceed to pass the following:-

ORDER

The IA No.III filed by the applicant/proposed defendant No.8 U/O.1 Rule-10(2) R/w Sec,151 of CPC is hereby allowed.

It is hereby directed the plaintiffs to implead the applicant/ proposed defendant as defendant No.8 in this case.

No order as to costs.

(Dictated to the steno, typed by her, corrected by me and then pronounced in open court on this 14th day of October 2024)

(K.S.Rotter)
Senior Civil Judge, Hukkeri.