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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 5th day of September day 2022.

O S No.68/2017

Plaintiffs: Smt. Mahadevi Ravasab Patil and others

V/s

Defendants: Shri Basagouda Ramppa Ammanagi and others

PARTIES TO IA No.XII

Applicants/Plaintiffs:

1. **Smt. Mahadevi Ravasab Patil,**
Age: 47 years, Occ: Agriculture,
R/o: Kochari, Taluk: Hukkeri,
District: Belagavi and others.
(By Shri M.S. Hiremath, Advocate)

-Versus -

Opponents/Proposed defendant No.10:

1. **Shri Shivanand Satappa Ammanagi,**
Age: 35 years, Occ: Agriculture,
R/o: Gudas, Taluk: Hukkeri,
District: Belagavi.
(By Shri P.R. Chougala, Advocate)

ORDERS ON IA No.XII FILED U/O 1 RULE 10(2) OF C.P.C

This is an application filed by the applicants/plaintiffs under Order I Rule 10(2) R/w Section 151 of Civil Procedure Code, impleading the opponent/proposed defendant No.10 as defendant No.10 in the suit.

2. In support of the above said application plaintiff -Smt. Mahadevi Ravasab Patil has filed her sworn to an affidavit explaining the reasons for impleading the opponent as defendant No.10 in the suit and prayed for allowing IA.
3. On the other hand the opponent/proposed defendant No.10 has filed his objections to IA and prayed for rejection of IA.
4. Heard both the sides.
5. The following points arise for my consideration.
 1. *Whether it is just and necessary to implead/add the opponent/proposed defendant as defendant No.10 in this case for the 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 the defendants. It is the case of plaintiffs that, propositus Irappa and his wife Avakka have got 5 children and all the said five children are died leaving behind the present plaintiffs and the defendants as their legal heirs. Further, the plaintiffs contended that, they along with the defendants constituted joint Hindu family and suit schedule properties are their joint family ancestral properties. The plaintiffs have got 1/5th share in the suit schedule properties and till today no partition effected in between the plaintiffs and the defendants. However, the defendants taking the disadvantage for their names appearing in the suit schedule properties causing obstruction for the joint possession and enjoyment of the suit properties of the plaintiffs. Hence, the plaintiffs filed this suit. Upon service of suit summons, the defendants appeared through their respective counsels and denied the case of the plaintiffs. In their written statement, the defendants specifically contended that, already partition taken place in the joint family of the plaintiffs and the defendants and they are all living separately. Hence, they prayed for dismissal of the suit. Thereafter, this court framed the issued and the plaintiffs have adduced the evidence of PW.1 & 2

and on the other hand, the defendants have also examined DW.1 in support of their contentions. At this stage, the applicants/plaintiffs have filed this IA No.XII under Order I Rule 10(2) R/w Section 151 of Civil Procedure Code stating that, the defendant No.9 has sold out the suit property bearing R.S. No.155 measuring 2 acres 3 guntas including 1 gunta phot kharab land situated at Gudas village in Hukkeri Taluk to the proposed defendant No.10 by executing sale deed. Accordingly, mutation entry was certified in M.R. No.H-18/2021-22 and in respect of the said mutation entry, a suit is pending in Tahasildar Office. During the pendency of the suit, the defendant No.9 has illegally sold out the suit property to the proposed defendant No.10 in which the plaintiffs also having their legitimate share. Therefore, for complete the adjudication of the matter in dispute adding of the said proposed defendant No.10 in this case is very much necessary. If this application is allowed, no loss or injury will be caused to the defendants. On the other hand, if this application is not allowed, the plaintiffs will be put to heavy loss and injustice. Accordingly, they prayed for allowing IA.

8. On the other hand, the opponent/proposed defendant No.10 has filed objections stating that, IA is false as such it is not maintainable. It is the objection of the opponent that, the plaintiffs

have not made out any grounds for allowing the application and filed a false sworn affidavit. The opponent stated that, he is not proper and necessary party to the present suit and he is bonafide purchaser of the suit property bearing R.S. No.155 measuring 2 acres 3 guntas including 1 gunta of phot kharab land situated at Gudas village of Hukkeri Taluk under the registered sale deed. Therefore, he has purchased the suit property from the lawful owner under the registered sale deed and the sale deed is legal and valid transactions, but the plaintiffs without having any right over the suit properties filed this false suit along with this false application with intention to give harassment to him. Accordingly, the proposed defendant No.10 prayed for dismissal of IA No.XII.

9. On perusal of pleadings and documents produced by the plaintiffs and defendants, affidavit filed in support of application and objection, it is observed that, the plaintiffs have filed this application on the ground that the proposed defendant is purchaser of the suit property bearing R.S. No.155 during the pendency of suit. On the other hand, the proposed defendant No.10 in his objections clearly admitted that, he has purchased the said suit property during the pendency of the suit, but his contention is that, he is the bonafide purchaser and he has purchased the suit property

from the lawful vendor/defendant No.9. Therefore, the alleged sale transactions are hit by Section 52 of Transfer of Property Act. However, in this case the plaintiffs claiming that, the suit schedule properties are joint family ancestral properties of plaintiffs and defendants. Therefore, whether the defendant No.9 has got a valid title to execute the sale deed in favour of the proposed defendants No.10 or not?, whether the suit of the plaintiffs against present defendants is maintainable or not? and whether the plaintiffs are entitled any share in the suit properties or not? are some substantial questions to be determined at later stage. In this case, the plaintiffs have filed suit for the relief of partition and separate possession in the joint family properties. Therefore, the proposed defendant No.10 has purchased the undivided share of the joint family member. The advocate for plaintiffs during the course of argument contented that, proposed defendant No.10 has purchased the suit schedule property during the pendency of the suit and he is also necessary party to the suit and for complete adjudication of the matter in dispute. The Hon'ble Supreme Court in a decision reported in *AIR 2007 SUPREME COURT 1062 in between Dhanalakshmi and others Vs. P.Mohan and others*, wherein it is held that,

“Civil P.C.(5 of 1908), O.1, R.10 Transfer of property Act (4 of 1882), S.52 – Impleadment of party – Partition suit – Sale of undivided share of suit property by co-sharers during pendency of suit – Appellants, bonafide purchasers of suit property would be entitled for alienor's share in equity – Therefore, they would be necessary and proper parties to suit pending before trial court – Order dismissing impleadment application set aside.”

10. I have perused the ratio laid down in the above said decision of the Hon'ble Supreme court along with this suit. The Hon'ble Supreme court in the above referred decision clearly held that, presence of purchaser of undivided share of suit property in dispute also necessary for the complete adjudication of matter. Hence, proposed defendant No.10 is also necessary party 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 this case adding of proposed defendant No.10 in this case is just and necessary. Further, by adding the proposed defendant 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 to implead proposed defendant No.10 on

record there is no loss will be caused to the opponent/proposed defendant No.10. On the other hand, if the application is not allowed injustice and hardship will be caused to the plaintiffs/applicants. From considering all these I come to the conclusion that. The plaintiffs have made out a ground that for adding the opponent/proposed defendant as defendant No.10 in this suit. Accordingly I answer point No.1 in the **affirmative**.

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

ORDER

The IA No.XII filed by the applicants /plaintiffs under Order I Rule 10(2) R/w Section 151 of Civil Procedure Code is hereby allowed.

It is hereby permitted the plaintiffs to bring the opponent/proposed defendant as defendant No.10 in this case.

No order as to costs.

(Dictated to stenographer directly on computer, corrected by me by and then pronounced in open court on this 5th day of September 2022)

-Sd/-
(K.S.Rotter)
Senior Civil Judge, Hukkeri.