

**IN THE COURT OF CIVIL JUDGE & JMFC
HUKKERI
O.S.No.26/2016**

Dated this 18th day of June 2019

**PRESENT; SMT. BHAGYAMMA
B.COM. LLB.,
CIVIL JUDGE & JMFC, HUKKERI.**

1. Smt. Sharifa w/o Mohammadshafi Nadaf
.... Plaintiff

V/s

1. Sri.Tukaram Lagama Koli and others
..... Defendants

PARTIES TO I.A.NO.XI

1. Sri.Shivagouda Ramagouda Patil
.... Applicant/proposed Plaintiff No.2

V/s

1. Sri. Tukaram Lagama Koli and others
..... Defendants

PARTIES TO I.A.NO.XII

1. Sri.Shivagouda Ramagouda Patil
.... Applicant/proposed Plaintiff No.2

V/s

1. Sri. Tukaram Lagama Koli and others
..... Defendants

ORDERS ON I.A. XI and XII

These applications are filed by the counsel for the proposed plaintiff No.2 under Order 1 Rule 10(2) R/w Sec.151 CPC and under Order 7 Rule 14(3) CPC to implead proposed plaintiff No.1 as party in the suit and to condone the delay in filing document by allowing the applications in the interest of justice.

2. In the sworn affidavit, the proposed plaintiff No.2 stated that he knew the case facts, he purchased suit schedule property at RS No.118/2 measuring 30-Gs through Registered Sale Deed on 17-05-2018 from plaintiff No.1. On the strength of said Sale Deed, he is the owner of said property. Hence, impleading him as party in the present suit is very necessary to adjudicate the matter. He also sought permission to produce the said sale deed executed by the plaintiff No.1. Accordingly, he prayed to allow the application.

3. On the other hand the counsel for defendants filed separate objections to each applications by resisting the same filed by the proposed plaintiff No.2 to implead him as a party in the present suit. The entire contents of affidavit denied by the defendants. Further it is specifically contended that the proposed plaintiff No.2 purchased suit schedule property during the pendency of suit. Originally the plaintiff No.1 filed this present suit against the

defendants for the relief of declaration, permanent injunction and also mandatory injunction in respect of suit schedule property. According to defendants the suit schedule property is not the landed property, but they are plots from No.47 to 61 prior to filing of suit. The husband of plaintiff No.1 Mohamadshafi Gajabarsab Nadaf sold out the above entire plots. After the purchase of said plots, the defendants constructed RCC buildings and they have been in possession of said properties. Despite of it, the plaintiff came up with this suit and also sold out the suit schedule property illegally during the pendency of suit in order to deprive the rights of defendants. The said Sale Deed created by them, which is not in accordance with law. The case in RTS SR No.40/2018-19 is also pending before Tahasildar. There is no ground to implead said proposed plaintiff No.2 as party in the suit. So also the producing of said document is not essential. Hence, they prayed to dismiss the application.

4. Heard and perused the available materials on record.
5. Now the points that would arise for my consideration are as under :

1. *Whether the proposed plaintiff No.2 has made ground to implead him as party in the suit and to produce document as prayed in IAs ?*
2. What order ?

6. My findings to the above points are as the following :

Point No.1 : In the Negative

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

REASONS

7. **Point No.1:-** The proposed plaintiff No.2 has filed these IAs to implead him as party in the suit and sought permission to furnish document by stating that plaintiff No.1 sold out the suit schedule property at RS No.118A/2 measuring 30-Gs through Registered Sale Deed on 17-05-2018. By virtue of Sale Deed he is absolute owner of the said property and impleading him as party is very necessary. Per contra, the defendants seriously resisted the same by filing objection. On going through the available materials on record, the present suit filed by the plaintiff No.1 against the defendant for the relief of declaration, permanent injunction and mandatory injunction. Whereas the defendants denied her title and possession over the suit schedule property by contending that he husband sold out the property in their favour after converting land as plots. Thereafter, the defendants constructed RCC buildings and they have been in possession of said properties. The plaintiff No.1 has already led her evidence and posted for her further chief examination. In the said situation, the plaintiff No.2 came up with these applications. As per Sale Deed produced by proposed plaintiff No.2, the said deed

came to be registered on 17-05-2018 during the pendency of this suit. It could be seen that the same is executed between plaintiff No.1 and plaintiff No.2 behind the back of defendants, that too in the pendency of this suit. Even there is dispute with respect to suit schedule property, the plaintiff No.1 sold out the same to proposed plaintiff No.2. If at all proposed plaintiff No.2 claims title over the said property by virtue of Sale Deed, then he would have file separate suit. But herein this suit he is not the proper and necessary party to implead him as party. Hence, the proposed plaintiff No.2 is not proper party for the determination of real matter in dispute. Similarly, the production of said sale deed is not essential to adjudicate the matter involved in this suit between existing parties. Hence, I answered the point the Negative.

10. **Point No.2:-** In view of my findings on the above points, I proceed to pass the following:

ORDER

I.A.XI and XII filed by the proposed
plaintiff No.2 U/o 1 Rule 10(2) r/w Sec.
151 of CPC are hereby dismissed.

No order as to cost.

(Dictated to the stenographer, directly on the computer and corrected, signed and then pronounced by me in the open court on this 18th day of June 2019)

Civil Judge & JMFC, Hukkeri

