

ORDER ON I.A. No.X

1. The instant application has been filed by the plaintiff under Order I Rule 10(2) of the Code of Civil Procedure seeking to implead the proposed defendant no.13 in the suit.

2. In response to the notice, the proposed defendant no.13 has appeared before the court and the learned Counsel for the proposed defendant no.13 has filed memo that he has adopted the contents of the statement of objections filed by the proposed defendant no.11.

3. I have heard the learned Counsel for the plaintiff on I.A.No.X and I have also heard the learned Counsel for the proposed defendant no.13 on I.A.No.X.

4. After perusal of the records of the case, the following point would emerge for my consideration:

1. Whether the proposed defendant no.13 is the proper and necessary party?

2. To what order?

5. My findings to the above points are as under:

Point No.1: In the Affirmative

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

REASONS

6. **Point No.1:** In an affidavit appended to the application, it is contended by the plaintiff that the suit properties being the joint

family properties and the proposed defendant no.11 and 12 have purchased the portion of the suit properties and in turn the proposed defendant no.13 has purchased the property from the proposed defendant no.11 and now it is necessary to implead the proposed defendant no.13 in the suit as he is the necessary party to the suit and accordingly, he prays to allow the application.

7. On the other hand, the proposed defendant no.13 has admitted that the proposed defendant no.11 has purchased the land on 06/07/2018 but she has contended that she has purchased the property prior to the institution of the suit and further contended that as per MR No.H6 dated 16/07/2015 the partition has taken place among the family members of the plaintiff prior to the institution of the suit and the land bearing S.No.255/7 has fallen to the share of the defendant no.5 and she has purchased from the defendant no.5 and accordingly, she is the bonafide purchaser of this property and further contended that she is neither necessary nor proper party to the suit and accordingly, among other grounds prays to reject the application with costs.

8. In view of the rival contentions put forth by the learned Counsel for the plaintiff and the proposed defendant no.13, now, let me see as to whether the presence of the proposed defendant no.13 is necessary for the just adjudication of the case. It is pertinent to note that the proposed defendant no.11 has categorically admitted in her statement of objections that she has purchased one of the suit properties from the defendant no.5. Further, the contentions by

the proposed defendant no.11 to the effect that the partition has taken place and she is the bonafide purchaser requires trial and it is not to be considered at this stage and it requires evidence. Further, it is pertinent to note that whether the partition has taken place among the family members of the plaintiff or not requires evidence and now it cannot be said that there was a partition in the family of the plaintiff. Further, the proposed defendant no.13 has admitted that he has purchased the property from the proposed defendant no.11. Therefore, the presence of the proposed defendant no.13 is necessary for the just adjudication of the case and in the absence of him an effective decree cannot be passed. Accordingly, I answer this point in the Affirmative.

9. **Point No.2:** In view of my discussion made supra, I proceed to pass the following:

ORDER

I.A.No. X filed by the plaintiff under Order I Rule 10 of Code of Civil Procedure is hereby allowed and the proposed defendant no.13 is to be impleaded in the suit as the defendant no.13.

The plaintiff is directed to amend the plaint and furnish the amended plaint.

(Sri. Hanamantarao R.Kulkarni)
Senior Civil Judge and JMFC.,
Hunagund.