

**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE AND  
JMFC.,AT DEVANAHALLI**

**Present:** Sri. PRATHAP KUMAR. N.,**B.A. L.L.B.,**  
Prl. Civil Judge & JMFC.,  
Devanahalli.

**Dated this the 2<sup>nd</sup> Day of March, 2023**

**O.S.No.327/2021**

**Plaintiff** : Sri. H.M Muniraju

**V/s**

**Defendant:** Sri. Muniraju and another.

**PARTIES IN I.A. NO.III**

**Applicant/  
defendant** : Sri. Muniraju and another.

**-V/s-**

**Opponent/  
Defendant** : Sri. H.M Muniraju

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**ORDER ON I.A. No.III**

This order arising out of I.A filed by defendants for implead proposed defendant no.3 as necessary party to the suit.

2. In support of I.A defendants have duly sworn

affidavit and stated that, plaintiff is not an absolute owner of suit schedule property, in fact, suit schedule property is a government property consisting of a huge banyan tree, plaintiff is in the above suit who is waterman in the concerned panchayath by misusing his designation and also by colluding with concerned official allegedly obtain Kath from No.9 and 10 in respect of Government land purely reserve fro public worship, hence proposed defendant is proper and necessary parties to be impleaded as defendant in this case. Hence prays to allow the application.

3. On other hand plaintiffs appeared through their counsels and resist application filed by defendants and stated contended that, application filed by defendants is not maintainable either in law or on fact, proposed defendant is no way concerned either with dispute in between plaintiff and defendant as such defendants have no right to claim that, proposed defendant is the necessary part to the present suit. Hence prays to reject the application.

4. Heard on arguments both side and perused the materials on record.

5. Upon perusal of the records and documents, the

following points are arisen for my consideration .

**:POINTS:**

- 1) **Whether the proposed defendants are necessary party to the suit? ?**
- 2) **Whether suit can be adjudicated without proposed defendants ?**
- 3) **What order?**

06. My findings on the above points are as follows:

**Point No. 1 : In the Negative**

**Point No. 2 : In the Affirmative**

**Point No. 3 : As per final order for the following:**

**REASONS**

07. **POINT No.1 and 2:** Since these points are inter linked with each other, they are taken up together for consideration in order to avoid repetition, as here under.

08. The plaintiff has filed present suit against defendants seeking relief of permanent injunction pertaining to suit schedule property, after instituted of this suit defendant was appear through his counsel and filed written statement by denying the plaint averments as well as right of plaintiff over suit schedule property, thereafter the defendants have filed these application for impleading defendant no. 3 by contending that proposed defendant

no3 is created revenue documents collusion with plaintiff in their favour with respect of plaint schedule property. therefore they are necessary party to the suit.

09. It is well settled law in that, every injunction suit and cause of action has arose only who may interfere with peaceful possession enjoyment of possessor of property, wherein on gone through pleadings, there is no case of action was arose against proposed defendants, further injunction suit is an summary trial which can be tried summarily and not determine title of suit schedule property pertaining to parties. Further mere khata changed by the public authority either under due process of law or not they are not necessary party of the suit on the sole ground because in a injunction suit the plaintiff shall be proved possession over suit schedule property and interference made by the defendant. Wherein the proposed defendants were changed khata after institution of the suit, therefore they are not necessary party to the suit.

10. It is well settled law in that, without any pleadings and case of action, proposed defendants are not arrayed as parties to the suit, further in absence of proposed defendants suit can be determine between plaintiff and

defendants alone. In this regard, Hon'ble Apex court has clarified about parties to suit in it's judgment in the case of **Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd.** Reported in **(2010) 7 SCC 417** as held in Para No.13 to 15 as under:-

*13. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure ("the Code", for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:*

*"10. (2) Court may strike out or add parties.— The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined,*

*whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”*

*14. The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the questions involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.*

*15. A “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a “necessary party” is not impleaded, the suit itself is liable to be dismissed. A “proper party” is a party who,*

*though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.*

In view of ruling cited about and discussed supra, the proposed defendants are not necessary to suit, further their right can be enforced by filing separate suit, in this suit the rights and liabilities of proposed defendants have not determined. **Hence, I answer point No.1 in the Negative and No.2 in the Affirmative.**

**13.POINT No.3:** In view of the above discussion, this court proceeds to pass the following:

**ORDER**

IA No.III filed by plaintiff is hereby  
rejected with cost of Rs.300/-.

(Dictated to Stenographer on computer on directly by him, then same is corrected and pronounced by me in the open court on this the 2<sup>nd</sup> day of March 2023)

**(Sri. Prathap Kumar. N)**  
Prl. Civil Judge and JMFC.,  
Devanahalli.

