

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,
AT DODDABALLAPUR.

Dated this the 12th day of January, 2018

PRESENT: Sri.M.B.KULKARNI,
B.Sc., LL.B (Spl)
Senior Civil Judge & JMFC.,
Doddaballapur.

O.S.No.161/2010

C/w

O.S.No.19/2013

Plaintiffs:- 1. Smt.Nagaratanamma,
W/o Late Ramanjinappa,
A/a. 44 Years, R/at: Obdenahalli Village,
Kasaba Hobli, Doddaballapura Taluk.
& Another.

(Rep by Advocate Sri.A.N.Lokesh Kumar)

V/s

Defendants:- 1. Smt.Ashwatamma W/o Sriramappa,
A/a. 58 Years, R/at: Nagamangala Village,
Kundana Hobli, Devanahalli Taluk,
Bangalore Rural District.
& 12 Others.

(Rep by Advocates:
Sri.L.M.N Advocate – For D1, D6 & D7,
Sri.N.Mohan – For D2,
Sri.V.M Advocate – For D3,
Sri.P.Shankarappa – For D4,
Sri.T.N.Balaji – For D5,
Sri.T.G.Vijaya Kumar – For D8,
Sri.M.Krishna Murthy – For 10 & D13,
Sri.Syed Nisar Ulla – For D11,
Sri.K.B.Chandrashekara Swamy – For D12
D9 – Exparte)

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ORDERS ON IA No.XXI

This is the application filed by third party applicants No.7 to 9 under order 1 Rule 10(2) of CPC to implead them as proposed defendants No.14 and 15 in O.S.No.161/2010 and as defendants No.8 and 9 in clubbed suit O.S.No.19/2013 as prayed for.

2. In the accompanying affidavit on I.A.No.XXI it is averred by the third party applicants that plaintiffs have filed this suit against defendants for partition and separate possession of their share in the suit properties against defendants. Already partition took place between their ancestor Sri.Hanumaiah and his sons Sri.Narayanaswamappa and Sri.Ashwathappa on 31-01-1979 and mutation has been effected in the name of share holders and Hiduvali Certificate is issued in the name of Sri.Ashwathappa i.e., father of applicant. Thereafter plaintiffs grandfather by name Sri.Subbanna challenged such mutation in RRT No.7/1999-2000 and that matter is decided on 25-02-2002 allowing the appeal of Late Sri.Subbanna. After death of father of applicant Late Ashwathappa on 04-07-2004 Khata of land bearing Sy.No.34/2 measuring 1-0 acre 0-25 guntas was transferred in the name of his mother who is one of the applicant in this I.A. and got mutation in her name. That mutation order was challenged in RRT No.7/1999-2000 and appeal was preferred in R.A.No.196/2007-08 and O.S.No.127/2007 was filed before Prl.Civil Judge & JMFC., at Doddaballapura. That suit came to be decreed against defendants and the third party applicants are declared as owners of the suit property in respect of Sy.No.34/2 and the above said R.A.No.196/2007 was disposed of in favour of third party applicant and his brother and mutation was effected in

their name. Thereafter KIADB acquired entire Sy.No.34/2 and the present applicants have objected for release of compensation amount to the plaintiffs. The plaintiffs by colluding with Revenue Authorities got mutated only their name to such acquired property to cause loss to the third party applicants who are not having any right in such property. Hence, the third party applicants being necessary parties to this suit to defend their rights in respect of above said property particularly Item No.7 of this suit filed such applicants and if such application is not allowed it causes much loss and hardship to third party applicants in protecting their rights. Hence, prayed to allow I.A.No.XXI.

3. The defendants No.1,6,7 and 10 filed their objections to the above said I.A. whereas defendants No.11 to 13 filed separate objections to such I.A. contending that I.A.No.XXI is not maintainable either in law or on facts, since such averments of I.A. are all false statements. It is contended that third party applicants are not necessary parties to this suit. It is contended that such applicants are nothing to do with partition suit O.S.No.127/2007. If at all the third party applicants are having ownership rights over suit schedule Item No.7 property, they can file separate suit but they cannot get implead in this suit. If the application of the third party applicants are allowed it changes nature of the suit from partition suit to declaration suit. Hence, prayed to dismiss I.A.No.XXI.

4. Heard both sides of I.A.No. XXI and perused material placed on record.

5. In the light of the above the following points arise for my consideration.

Point No.1: Whether the third party applicants have made out grounds to allow I.A.No.XXI?

Point No.2 : What order?

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

Point No.1: In the Negative.

Point No.2: As per final order.

REASONS

7. **Point No. 1:** It is not disputed by both parties to the suit that third party applicants do not belong to the plaintiffs family. It is also not disputed between parties that O.S.No.127/2007 is filed by plaintiffs grandfather Late Sri.Subbanna during his lifetime challenging the title of third party applicants in respect of Sy.No.34/2 i.e., suit schedule Item No.7 of this property. If at all that suit O.S.No.127/2007 was decreed as per the averments of the petitioner then they can execute such decree if at all it is final one and executable one as per the law and they can seek their remedy in that suit only but they cannot implead in this suit which is filed by plaintiffs or relief for partition of their share in this suit. This suit being filed for partition if the I.A.No.XXI is allowed the nature of partition suit changes into suit for declaration of the title and rights of the third parties and that changes the nature of the suit. Which is not permissible under the law. Hence, such I.A.No.XXI is not maintainable.

8. If at all really the third party applicants are having any rights over Sy.No.34/2 which is suit schedule Item No.7 of this property, they can file a separate suit for declaration of their title over such property or they can seek their remedy in the O.S.No.127/2007 itself which is already disposed of by Prl.Civil Judge Court, Doddaballapura. Therefore, as rightly contended by the defendants

in their objections to I.A.No.XXI if the I.A.No.XXI is allowed definitely it changes the nature of the suit and cause of action and it will amount to giving scope to the third party applicants to drag on the matter for years together and to harass the plaintiff to avoid the fruits of the decree. Hence, I.A.No.XXI deserves to be dismissed. Therefore, I answered above point in the negative.

9. **Point No. 2:** On the basis of my above reasons and in the result I proceed to pass following;

ORDER

1. The I.A No.XXI filed by the third party applicants is hereby dismissed.
2. In the circumstances of the case there is no order as to the cost.

(Dictated to the Typist copyist, typed by her, corrected and then pronounced by me in the open Court on the 12th day of January, 2018.)

(M.B.KULKARNI)
Senior Civil Judge,
Doddaballapur.

Vide Separate Order

1. The I.A No.XXI filed by the third party applicants is hereby dismissed.
2. In the circumstances of the case there is no order as to the cost.

Senior Civil Judge,
Doddaballapur.