

Order on I.A. filed U/O.1 RULE 10(2) R/w.Sec.151 of C.P.C.
and I.A. U/s.80(2) of C.P.C.

The plaintiffs have filed I.A. U/O.1 rule 10(2) of R/w.Section 151 of C.P.C. to implead the proposed defendant as defendant no.2 in the present suit as the Panchayath Development Officer of Kodigehalli Gram Panchayath is the proper and necessary party the present suit.

2. The plaintiffs have also filed I.A U/s.80(2) of C.P.C. to dispense with the prior notice to proposed defendant no.2 as required U/s.80(1) of C.P.C. in view of the urgency in the matter.

3. The plaintiff no.1 sworn to the affidavits of both the applications and taken the similar contentions stating that they have filed this suit for the relief of declaration and permanent injunction against the defendants. The proposed defendant no.2 is the Government servant and hence it is very urgent and necessary to serve the legal notice U/s.80(1) of C.P.C. and due to urgency of the matter, it is very much necessary. Therefore, they have filed the said I.A. The proposed defendant is the Government authority and without any legal notice or without bringing to the knowledge of the plaintiffs has changed the katha into the names of the defendant illegally. In spite of the fact that the suit property belongs to the plaintiff. Therefore, it is very much necessary to implead the produced to the present suit as the said authority is the proper and necessary party to the proceedings. If the applications are allowed, no harm or injustice would be caused to the defendants. If the applications are not allowed, they will be put to great loss and hardship which cannot be compensated in terms of money. On all these grounds, prayed to allow the applications.

4. I.A. notices were issued to the proposed defendant no.2, but the said notices were unnerved as such, the plaintiffs have taken hand summons / IA. Notice and the I.A. notice was served on proposed defendant no.2 and the proposed defendant no.2 called out absent as per order sheet dated 24-10-2019. Thereafter

5. On considering the I.A. affidavit and materials on record, the points that would arise for my consideration are as under:

1. Whether the Interim application filed by the applicants/plaintiffs Under Order 1 rule 10(2) R/w section 151 of C.P.C.,

is deserves to be allowed and whether the proposed defendant no.2 is necessary and proper party to the present suit ?

2. Whether the application filed by the applicants/plaintiffs U/s.80(2) of C.P.C. is deserves to be allowed?

3. What order?

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

Point No.1 & 2 : In the Affirmative

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

REASONS

7. Point No. 1 and 2 :- The plaintiffs have filed this suit for the relief of declaration and mandatory injunction against the defendant. On perusal of the order sheet it reveals that the applicants/plaintiffs have filed this application to implead the PDO, Kodigehalli Gram Panchayath as proposed defendant no.2 in the present suit.

8. Further the plaintiffs have filed I.A. U/s.80(2) of C.P.C. seeking prior dispensation of notice to the proposed defendant no.2. When the case was posted for further chief-examination of P.W-1, at that time the plaintiffs have filed these applications.

9. The learned counsel for the applicants/plaintiffs argued that the Section 80(2) of C.P.C. does not specify that an I.A. seeking interim relief requires to be filed to make out an urgency so as to dispense with the issuance of prior notice. It is suffice if the plaintiff prima-facie shows that there is some urgency in the disposal of the suit itself. Therefore, even after the registration of suit nothing prevents the Court to give reasonable opportunity of showing cause in respect of the relief sought by the plaintiff in the suit.

10. It is to be noted here that the proposed defendant no.2 is stated to be the proper and necessary party to the present suit. In the absence of the proposed defendant no.2, the suit cannot be adjudicated effectively. Further, if in the absence of the proposed defendant no.2, present matter is adjudicated it would leads to multiplicity of proceedings and also leads to future complications.

11. Moreover, the plaintiff has sought the relief of declaration to declare them as the absolute owners of the property and to direct the defendants to remove the sheds constructed over the suit schedule property which was shown as ABCD and to deliver the vacant possession of the said encroached portion. The plaintiffs have also sought the relief of permanent injunction against the defendant. Further the proposed defendant No.2 is the necessary party to the present suit. Therefore, the proposed defendant no.2 is stated to be the proper and necessary party to the present suit. Therefore, the plaintiff was constrained to file the present applications to implead the proposed defendant no.2 as a party to the present suit. At this stage it is necessary to refer decision reported in **ILR 2012 KAR 2049 in between Karishma Anand D/o. Harish Anand V/s. Union of India, Passport Department, New Delhi, represented by its Secretary, Regional Passport Office, Koramangla**, wherein the Hon'ble High Court of Karnataka while dealing with the provisions of Section 80(2) of C.P.C. in the above mentioned decision pleased to held that the object of the issue of notice U/s.80(2) of C.P.C. is to provide an opportunity to the Government to consider the legal position to settle the claim without impleading the parties to go for litigation and also to afford an opportunity to the officer of the Government to scrutinize and settle the matter, if possible with a minimum action. So that unnecessary litigation is avoided. However, Section 80(2) of C.P.C. also provides for the situation where notices can be dispensed with as discussed in the body of the decision, where the matter needs to be decided urgently.

12. It is pertinent to note here that section 80(2) of C.P.C. is filed on 10-01-2019 and the application U/O.1 rule 10 of C.P.C. was filed on 10-01-2019. More over the I.A. notice of the I.A U/o.1 rule 10(2) of C.P.C. and I.A. U/s.80(2) of C.P.C. were issued to the proposed defendant no.2 . In spite of service of I.A. notice the proposed defendant no.2 could not put his appearance, as such, the I.A.s were heard in his absence. Considering the reasons assigned in the affidavits, this Court satisfied that the plaintiffs have made out prima-facie grounds to allow the applications. Hence, considering all these aspects, I am of the view that the plaintiffs have made out sufficient grounds to allow the applications. Hence, I answer the point no.1 and 2 in the **'Affirmative'**.

13. **Point No. 3:-** For the findings given in point No. 1 and 2, I proceed to pass the following;

:: ORDER ::

I.A.s filed by the applicants/plaintiffs under Order 1 Rule 10(2) r/w 151 of C.P.C., and I.A. U/s.80(2) of C.P.C. are hereby allowed.

Consequently the plaintiffs are permitted to institute the suit against the proposed defendant No. 2 by dispensing the issuance of notice as provided U/s 80 of C.P.C. for the time being.

The plaintiff is permitted to implead the proposed defendant no.2 as defendant no.2 in the present suit.

Call on for amendment by 04-07-2020.

**Prl. CJ & JMFC
Doddaballapura**