

ORDER ON IA NO.II

Plaintiffs have filed the present application under Order 22 Rule 10 of Code of Civil Procedure,1908 (Hereinafter referred to as 'CPC', for brevity) seeking to implead opponents as supplemental defendant No.2 to 13.

2. It is averred in the affidavit annexed to the application that, the defendant No.1 being absolute owner formed a layout

named as Sai Garden, M/s. S.A.Foundation Private Ltd., in land bearing Sy. No.32/1P-1 and Sy. No.30/1D situated at Devalapura Village, Anugondanahalli Hobli, Hosakote Taluk and he sold the twenty sites in favour of the first plaintiff and twenty sites in favour of the second plaintiff. The defendant No.1 entered into an agreement of sale with the clients of plaintiff No.2 on 10.02.2016 and he received part sale consideration amount of Rs.1,05,00,000/-. Subsequently, he failed to execute sale deed. During the subsistence of the agreement of sale, the representative of defendant No.1 executed several sale deeds in the name of the proposed defendant No.2 to 10 without the knowledge of the plaintiffs. The proposed defendant No.2 to 13 have no manner of rights to purchase the said sites from the representative of the defendant. With these, prayed to allow the application.

3. In pursuance to the notice issued by this Court, the proposed defendants appeared through their counsel and resisted the application by filing objections. It is specifically contended that the proposed defendants are not necessary party to the suit and no relief is claimed against them. Their presence before the Court is not necessary to decide the matters involved in the above suit. Thus, the proposed defendants have sought for dismissal of the application.

4. The points that would arise for consideration are:-

1. Whether the application filed by the plaintiffs deserves to be allowed?
2. What order?

5. I have heard the Learned Counsel for the parties and meticulously perused the material on record.

6. My answer to the above said points are as follows:

Point No.1: In the Negative;

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

7. **Point No.1:** The plaintiffs have filed the present suit against the defendant for permanent injunction. The Learned Counsel for the plaintiffs submitted that the proposed defendants are the subsequent purchasers of the suit schedule properties and during the pendency of the suit, the defendant No.1 alienated the suit properties in favour of the proposed defendants. In view of alienation of the suit properties during the pendency of the suit, the proposed defendants are proper and necessary party to the suit. As such, he prayed to allow the application. Counter to that, the learned counsel for the proposed defendants submitted that no relief is claimed against the proposed defendants and their presence before the Court is not necessary to decide the matters

involved in the above suit. As such, he prayed to dismissal of the application.

8. When the matter was posted for issue summons, at this stage the plaintiff have filed the present application seeking to implead the proposed defendants as supplemental defendant No.2 to 13. It is worth to refer decision of the Hon'ble Apex Court in the case of Kasturi -Vs- Iyyamperumal and Others reported in (2005) 6 SCC 733, wherein their lordships have held that, two test are to be satisfied for determining the question who is a necessary party. **Test are (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party.** The plaintiffs have filed suit for injunction simpliciter against the defendant No.1. It is settled law that in a suit for injunction simpliciter, relief in personam and the cause of action cannot be carried forward for the subsequent purchaser. It is pertinent to note that the plaintiffs have not challenged the alleged sale deed said to be executed by the representative of the defendant. Thereby, applying the test laid down in the case of Kasturi (supra), the proposed defendants are not a necessary party to the present case. To settle the questions involved in the present suit the proposed defendants are not necessary parties. Accordingly, I answer point No.1 in the **'Negative'**.

9. **Point No.2:** In view of discussion and the findings arrived at point No.1, I proceed to pass the following:

ORDER

IA No. II filed by the plaintiffs is hereby dismissed.

No order as to costs.

Call on:

**Prl. Civil Judge & JMFC.,
Hosakote.**