

O.S. No. 160 / 2017

**ORDER ON APPLICATION FILED BY THE
PROPOSED DEFENDANTS NO.5 TO 7 UNDER
ORDER 1 RULE 10[2] READ WITH SECTION
151 OF CPC**

These proposed defendants filed this application with contention that, defendant No.1 to 4 are their brothers. The plaintiff filed this suit for the relief of specific performance of contract in respect of suit schedule property pleaded that, the defendant No.1 to 3 have executed the unregistered sale agreement in favour of plaintiff on 23.11.2009. These proposed defendants contended that, the suit schedule property is ancestral and joint family property of defendants. The defendant No.1 to 3 not having any authority to execute the agreement of sale. These proposed defendants further submits that, they have filed suit for partition against the defendants of this suit and also plaintiff of this suit is made a party in bearing O.S. No. 87/2018 as defendant No.5. The said suit is pending for consideration. Therefore these defendants

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claiming the right over the property as a joint family member and therefore, prayed for implead them as a defendants in this case.

On the other hand counsel for plaintiff and other defendants said no objection to allow the said application. Further the defendants and plaintiffs not filed any objection to the above said application.

Perused the case file and application. The plaintiff filed this suit for the relief of specific performance of contract against the defendants. The said proposed defendant No.5 to 7 also contended that, they are joint family members along with defendant No.1 to 4. These proposed defendant No.5 to 7 contended that, the suit schedule property is joint family and ancestral property, they are also having share in the suit schedule property. Further these proposed defendants submits that, they filed the suit for the relief of partition and separate possession and the plaintiff of this suit i.e., agreement holder also a party in the said partition suit. The

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plaintiff of this suit came with specific plea that, the defendant No.1 to 4 agreed to sell the suit schedule property to the plaintiff. On the basis of agreement he filed this suit for specific performance of contract. Under such circumstances the plaintiff has to prove his case by cogent evidence. The burden is on the plaintiff. The proposed defendant No.5 to 7 already filed the suit for the partition and separate possession. They can claim their right in their suit by cogent evidence. Therefore, this Court come to the conclusion that, the said proposed defendant No.5 to 7 are neither necessary party nor property party to this suit.

For above said reasons and discussions, this Court proceed to pass the following :

ORDER

The application filed by the proposed defendant No.5 to 7 U/O 1 Rule 10[2] R/W Sec.151 of CPC is hereby dismissed.

[N.B. Shaikh]
Prl. Civil Judge and JMFC,
Hiriyur.

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This case is posted for cross of PW-1.

Call on 03.09.2019.

[N.B. Shaikh]
Prl. Civil Judge and JMFC,
Hiriyur.