

IN THE COURT OF III ADDL. CIVIL JUDGE & J.M.F.C.
AT KADUR

Present : Sri.Deepu M.T. B.A. L. LL.B.,
III Addl. Civil Judge & J.M.F.C.,
Kadur.

Dated this 17th day of June 2021

ORIGINAL SUIT NO.243/2019

Plaintiff/s:

1. Smt.Manjamma W/o Late Govindappa, Aged about 63 years, Agriculturist, R/o Kalisdasanagara, Kadur Taluk and Taluk, Chikkamagaluru District.
2. Smt. Swarna W/o Gurumurthy, Aged about 43 years, House-wife, R/o Yenjagondanahalli village, Arasikere Taluk, Hassan District.
3. Smt. Mamatha W/o Rangaswamy, Aged about 38 years, House-wife, R/o Benki colony, Kadur Town and Kadur Taluk.
4. Smt. Bhagya W/o Vasanth, Aged about 35 years, House-wife, R/o N/H-206, Arasikere Town, Arasikere Taluk, Hassan District.
5. Smt. Jyothi W/o Venkatesh, Aged about 33 years, House-wife, R/o Behind Taluk Office, Belur Town, Belur Taluk, Hassan District.

[By Sri S.N.G., Advocate]

V/S.

Defendants:

1. Smt. Bhyramma W/o lat Ramanna, Aged about 65 years,

House-hold work, R/o
Kalisdasanagara, Kadur Taluk and
Taluk, Chikkamagaluru District.

2. Smt.Pushpa W/o Thippeshappa,
Aged about 37 years, House-hold.
R/o Kedigere village, Hirenalluru
Hobli, Kadur Taluk.

3. Manjunatha S/o Thimmanna,
Aged about 30 years, collie,
Agriculturist, R/o Benki colony,
Kadur Town and Kadur Taluk.

[D1 By Sri C.B./M.S.H.
and D2 and 3 Ex-parte]

PARTIES TO I.A.NO.V

Applicants: Smt.Susheelamma and others
V/s

Opponents: Smt. Manjamma and others

ORDER ON I.A.NO.V FILED U/O 1 RULE 10 R/w SEC.151
OF CPC

The counsel for the applicants has filed this application
to implead them applicants as defendants in this case and
defend the matter in the interest of justice and equity.

“Proposed defendant No.1 to 5”

1. Smt. Susheelamma W/o Shankarappa, D/o
late Ramanna, Aged about 55 years,
2. Smt. Rathnamma W/o Sunandappa, D/o
late Ramanna, Aged about 48 years,
3. Smt. Gowramma W/o Puttappa, D/o late

Ramanna, Aged about 46 years,

4. Srinivasa S/o late Ramanna, Aged about 45 years,

5. Sridhara S/o late Ramanna, Aged about 38 years,

All are R/o Sunnagarara Beedi, Doddapete, Kadur Town.

2. In support of the application, the applicant No.5 has sworn to an affidavit and stated that the defendant No.1 is their mother and their father was also expired and they are the legal heirs of deceased Ramanna and also necessary parties to the suit. It is further stated that for the final adjudication of the suit, the presence of the children of Ramanna are necessary parties and they are impleaded as parties no injustice will be caused to the plaintiffs. Hence, prayed to allow the application.

3. The counsel for the plaintiffs has resisted the application by filing objections contending that the application is not maintainable either in law or on facts and same is to be dismissed in limine. It is further stated that the plaintiffs have filed this suit for Permanent Injunction over the suit schedule property and the defendants are trying to disturb the peaceful possession of the plaintiffs over the plaint schedule property. The non-joinder or mis-joinder of parties in a bare injunction suit does not arise, hence, application filed by the applicants is not maintainable under law. The

applicants are not a necessary parties in this suit in any manner and their presence is not required to dispose of the above suit in accordance with law. If the application is not allowed there is no injury will be caused to the applicants. Hence, sought to reject the application.

4. Heard counsel for the applicant and plaintiffs.
Perused the documents on record.

5. Now the points that would arise for my consideration are:

1. Whether the application filed U/o 1 rule 10 R/w Sec.151 of CPC deserves to be allowed?

2. What order?

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

Point No.1 : In the Negative

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

REASONS

7. **POINT NO.1:** The plaintiffs have filed this suit for the relief of Permanent Injunction against the defendants. I have gone through the pleadings and I.A. No.V along with annexed affidavit. Through the instant application the applicants seeking to implead themselves as defendants in the above suit stating that defendant No.1 is the mother of the applicants and their father Ramanna has expired leaving

behind defendant No.1 and applicants. After demise of Ramanna, defendant No.1 and applicants are the legal heirs of the deceased Ramanna and it could be seen from the katha of the suit property stands in the name of their mother. But the plaintiffs claimed that formerly Ramanna was the owner and being the legal heirs of Ramanna having entrusting the property described in the schedule, hence, the applicants are the necessary parties to the suit.

8. On the other hand, the plaintiffs have resisted the application by filing objections contending that non-joinder and mis-joinder of parties in a bare injunction suit does not arise at all. Hence, application filed by the applicants is not maintainable under law of the land. Further the applicants are not necessary parties in the suit in any manner and the presence of the applicants is not required to dispose the above suit.

9. At this stage, it is relevant to refer Order I Rule 10(2) of CPC , thus reads as follows

Order I Rule 10(2) of CPC: The 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 joinder, 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 enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

On going through the above said provision the court may at any stage of the proceedings, either upon or without the application of either party, whose presence before the Court may be necessary in order enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, can be added.

10. In the present case on hand, the plaintiffs have filed this suit alleging that the defendants have interfered to their peaceful possession and enjoyment of plaint schedule property. Further the plaintiffs have not alleged any interference caused by the applicants. Considering the facts and circumstances of the case, in a suit for bare injunction impleading application does not arise. Because a person who attempted to interfere with the possession of the plaintiffs alone is necessary party for disposal of the suit. In the cause of action of the plaint it was specifically mentioned that on 09.05.2019 the defendants attempted to interfere with the peaceful possession of the plaintiffs and those defendants were already impleaded as parties to the suit and there is no allegation with respect to applicants. But in the present application, the applicants have not stated that as to how they are necessary parties to the suit. On the other

hand, the applicants claimed that their father i.e., husband of defendant No.1 was the original owner of the plaint schedule property. Since the applicants are the children of defendant No.1, they are the necessary parties to this suit. This suit is being for Permanent Injunction this court cannot go through title of the property. If the applicants claiming their right over the plaint schedule property, they can approach proper forum for their remedy and there is no scope in this suit to decide the rights of the applicants over the plaint schedule property. Under such circumstances the applicants are not necessary parties to this suit.

11. It is settled principle of law that the plaintiff is dominus litis i.e., he is the master of his suit. He may choose the person against whom he wishes to litigate and he cannot be compelled to sue a person against whom he does not seek any relief. The said ratio is emerged in the decision of Hon'ble Apex court in civil appeal Nos.5522-5523 of 2019 between Gurmit Singh Bhatia Vs Kiran Kant Robinson and others. Herein this case the plaintiffs have not claiming any relief or allegation against the present applicants. Such being the case the applicants have no right to implead themselves as defendants in the present suit. Accordingly, the applicants have not made out any grounds to allow their application. Hence, Point No.1 is answered in the Negative.

12. **POINT NO.2**:- In view of my findings made supra, I proceed to pass the following :

ORDER

I.A.No.V filed by the applicants under
Order 1 Rule 10(2) r/w Section 151 of CPC is
hereby dismissed.

(Dictated to the Stenographer, transcribed by her, the transcript corrected and pronounced by me in the open court on this the 17th day of June 2021)

(Deepu M.T.)
III Addl. Civil Judge and JMFC.,
Kadur.