



IN THE COURT OF THE PRL. CIVIL JUDGE AND JMFC.,
MUDIGERE.

DATED: THIS THE 06th DAY OF FEBRUARY 2023

Present: Sri. Sachin.D, B.A., L.L.B.
Prl. Civil Judge & JMFC.,
Mudigere.

ORIGINAL SUIT No: 57/2019

BETWEEN :

1. Kum.D.J.Eshwari,
D/o Sri.D.R.Jayaram,
Aged about 19 years.

2. Master D.J.Edanth,
S/o Sri.D.R.Jayaram,
Aged about 9 years.

R/o Devavrunda Village & Post,
Mudigere Taluk,
Chikkamagaluru District.

Plaintiff No.2 is minor

Represented by plaintiff No.1

... Plaintiffs

(By Sri. M.S.Gopala Gowda, Adv.)

AND :

1. Sri.D.R.Jayaram,
S/o late Rangegowda,
Aged about 48 years,
R/o Devavrunda Village & Post,



Mudigere Taluk,
Chikkamagaluru District.

2. Smt.Sahithya.B.N,
W/o D.R.Jayaram,
Aged about 40 years.

3. Sri.Arun Hassan Jayaram,
S/o H.R.Jayaram,
Aged about 38 years,
R/o # 56, II Cross, II Stage,
Arekere, MICO Layout,
Bengaluru-76.

...Defendants

(D1-By Sri.S.Siddaiah, Adv.,)

(D2-By Sri.B.A.Suresh, Adv.,)

(D3-By Sri.D.K.Prasanna Kumar, Adv.,)

PARTIES ON I.A.NO.3

BETWEEN :

Kum.D.J.Eshwari & Anr.

... Applicants

AND :

Sri.K.M.Prakash.

...Proposed Defendant

ORDERS ON I.A.NO.3

The plaintiffs have filed the present application by invoking provision under Order 1 Rule 10(2) of CPC, at the stage when the case is set-down for plaintiff evidence, seeking an order of this to implead the proposed defendant



as defendant No.4 in the present suit as he is the proper and necessary party to the suit.

2. In the memorandum of facts accompanied to the application it is stated that the plaintiffs have filed the present suit against the defendants for the relief of partition and declaration. Defendant No.3 has filed written statement and wherein contended that defendant No.1 and 2 have sold joint family properties through a registered sale deed dated 18.06.2012, in favour of one K.M.Prakash and he has not arrayed as a party to the suit. Further it is contended that plaintiff has not included the some other properties of Devarunda village, which have been sold on 18.06.2012. Therefore, the proposed defendant is proper and necessary party to the present proceedings. Hence, it is just and necessary to implead him as a additional defendant in the suit. Accordingly, prayed for allow the application as sought for.

3. The above application has been resisted by the proposed defendant by filing objection statement. Wherein it is contended that the application of the plaintiffs is not maintainable as it is vexatious, capricious and filed to harass the proposed defendant. It is further contended that defendant No.3 in his written statement has taken some vague and



ambiguous contention and the same has to be proved after holding full fledged trial. Without doing so, present application filed to harass mentally to the proposed defendant. It is further contended that upon vague statements, the plaintiff have stepped into the shoe of defendant No.3. It is further contended that in fact that exist any claim, which are claimed against the defendants by the plaintiff will suffice there case and without waiting for the out come, the resorted to file the present application implead the proposed defendant. It is further contended that no relief claimed against the proposed defendant in the plaint and as such, the application is not maintainable and acceptable.

4. It is further contended that there are lots of lacuna in filing the suit and it is filed by collusion with defendant No.2 as she is the mother of the plaintiffs and to take revenge against the defendant No.1 as the relationship between husband, wife and children was soared. It is further contended that defendant No.1 has also initiated the proceedings of divorce against defendant No.2 and therefore, individual, personal and conjugal dispute are the main reason for file the present suit and also for the application. It is further contended that the proposed defendant is the bonafide purchaser and both the plaintiffs have represented through



their natural guardian and next friend who are defendant No.1 and 2 to sale deed under which the properties have been sold. The plaintiffs have already benefited and the suit schedule properties are purchased out of the proceedings of the sale took place between the proposed defendant, plaintiffs and defendant No.1 and 2. Further it is contended that suit of the plaintiff is collusive in nature and therefore, the proposed defendant who is bonafide can't be swindled by these pressure of tactics. Further, the application filed by the plaintiffs beyond the period of limitation and therefore, the proposed defendant can't be made as a party in the proceedings. Hence, prayed for dismiss the application of the plaintiffs with exemplary costs.

5. In view of the above rival contentions of the both parties, the following points arise for consideration.

1. Whether the proposed defendant is proper and necessary party to the present proceedings to adjudicate the questions involved in this suit?

2. What order?

6. Having heard both side, the court perused the application, objection statement and other materials made



available on record. Now, the findings of the court to the above points are as follows.

Point No.1 : ***In the Affirmative***

Point No.2 : *As per final order*

for the following:

REASONS

7. POINT No.1: The plaintiffs have filed the present suit for the relief of partition and declaration with respect to suit schedule properties against the defendants. The present application is filed when the case is set-down for plaintiff evidence to implead the proposed defendant as additional defendant No.4 in the suit as he is the proper and necessary party to adjudicate the all questions involved in the suit.

8. It is the contention of the plaintiff that defendant No.3 after entered appearance through his counsel, filed his written statement contending that some of the joint family properties have been sold by defendant No.1 and 2 in favour of K.M.Prakash who is the proposed defendant herein, through a registered sale deed dated 18.06.2012 and as such, he is the necessary party to the suit. On careful reading of the written statement of defendant No.3 which filed on 24.09.2019, makes clear to the court that in



para No.17, he has specifically contended that defendant No.1 and 2 have sold the joint family property of the plaintiffs through a registered sale deed in favour of proposed defendant herein. But the both parties have failed to produce the sale deed dated 18.06.2012 to look into the same. However, it became clear that on the contention raised by defendant No.3 in his written statement, the plaintiffs have moved the present application as the proposed defendant is the necessary party to the suit.

9. On the other hand, the proposed defendant in the objection statement he has contended that the written statements contentions of defendant No.3 are vague and ambiguous and without proving the same, the plaintiff has filed the present application by stepping into the shoes of defendant No.3, therefore, application is not maintainable. It is very pertinent to note that whether the contentions asserted by defendant No.3 in the written statement are vague and ambiguous has to be proved after holding the full fledged trial. But it doesn't restrain the plaintiff to make the present application to implead the proposed defendant in the present case. Because if the plaintiff without making application goes with the trial and the decision has been rendered by the court, then the plaintiff cannot impleaded the proposed defendant after deciding that the contention of



defendant No.3 are vague and ambiguous. Further, Order 1 Rule 10(2) of CPC empowers the court to strike out or add parties at any stage of the proceedings either upon or without application of the either parties. Therefore, the application for impleading the party has to be filed while pending the proceedings itself. As such, contentions asserted by the proposed defendant in his objection statement at para No.5 to 7 doesn't survive for consideration.

10. It is the contention of the plaintiffs that the proposed defendant has purchased the properties of joint family under the sale deed dated 18.06.2012. Even though, plaintiffs have not produced certified copy of the said sale deed to substantiate their contentions, the proposed defendant at para No.11 of his objection statement he admitted that he purchased the properties and as such, he is the bonafide purchaser. Thus, the proposed defendant has purchased the properties from defendant No.1 and 2. Of course he contended that he has purchased the properties by defendant No.1 and 2 who are the natural guardians of the plaintiff and also out of the sale transaction, the schedule properties have been purchased. The correctness of the said aspects have to be decided by holding the full fledged trial. At this stage, the court can't



give any findings on the same and the court has to looked in to that whether the proposed defendant is necessary and proper party to the suit to adjudicate the all questions involved.

11. As observed above, the proposed defendant in his objection statement admitted that he has purchased the joint family properties from defendant No.1 and 2. Therefore, if the properties purchased by the proposed defendant under the sale deed dated 18.06.2012, have been included in the suit, then he will be the proper and necessary party to adjudicate the questions. Proposed defendant rightly contended that no relief claimed against him by the plaintiff. On the other hand, the plaintiffs have also not whispered anything as to properties purchased by the proposed defendant have been included in the suit. But the proceedings goes to show that the plaintiffs have also filed IA.No.5 under Order 6 Rule 17 of CPC to include the properties which are purchased by the proposed defendant. Therefore, it is clear that since the plaintiffs are going to add the properties purchased by the proposed defendant under the sale deed dated 18.06.2012, the proposed defendant is the proper and necessary party to the suit. Accordingly, the contention as asserted by the proposed



defendant in his objection statement are not sustainable.
Hence, this court answer point No.1 **in the Affirmative.**

12. POINT No.2: In view of the above findings on point No.1, this court proceed to pass the following.

ORDER

The IA.No.3 filed by the plaintiffs under Order 1 Rule 10(2) of CPC is hereby allowed.

Consequently, the proposed defendant impleaded as a defendant No.4 in the present suit.

The plaintiffs are hereby directed to amend the cause title of the plaint and to furnish the amended plaint.

No order as to costs.

(Directly dictated to the stenographer, typed by him on computer, corrected and then pronounced by me in the open court on this the 06th day of February, 2023)

(Sachin. D)
Prl. Civil Judge & JMFC,
Mudigere.

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