



**IN THE COURT OF THE ADDL. CIVIL JUDGE AND JMFC.,
MUDIGERE.**

DATED: THIS THE 23rd DAY OF AUGUST 2024

Present: Sri. Vishwanath.A, B.B.A., L.L.B.
C/c Addl. Civil Judge & JMFC.,
Mudigere.

ORIGINAL SUIT No: 79/2023

BETWEEN

M/s. ASSA Real Estate Pvt. Ltd.,
Represented by its Directors,
Mr.Asher Raman Shariff,
Aged about 38 years,
R/o 1st Floor, No.18, 7th Main Road,
HRBR Layout, Kalyana Nagara,
Doddinakoppa of Javali Village,
Bangalore-560 043.

.....Plaintiff

(Sri.K.C.Shiva, Adv.)

AND

- 1.** M/s. Kalasa Estate (KE)
Registered Partnership Firm,
Represented by its Partners.
- 2.** Mr.Alaghu Vairam,
Aged about 27 years,
S/o S.Sockkalingam.
- 3.** Sri.Shivasubramanyam,
Aged about 31 years,
S/o S.Sockkalingam,
R/@ Havint its office @ Kalasa Estate,
Kalasa Taluk, Chikkamagaluru District.
Represented by GPA Holder
Sri.Mohammed Hariss,



Aged about 52 years,
S/o Mohammed Sadiq,
Royal Bens Wood, No.90,
Nagenahalli Cross, Bus Stop,
Kannur @ Post, Bagalur,
Bengalure-562 149.

.....Defendants

(By Sri.N.S.Jayaram, Adv.)
(Proposed defendants By Sri.Siddaiah.D, Adv.)

PARTIES ON I.A.NO.3

M/s. ASSA Real Estate Pvt. Ltd., Applicant

AND:

M/s. Kalasa Estate (KE) Opponent
Registered Partnership

1	Provisions under which the application is filed	Under Order 1 Rule 10(2) R/w section 151 of CPC
2	Relief sought for	Permission to implead the proposed defendant
3	The date on which the application is filed	24.11.2023
4	Number of the application	3
5	The date on which the objection filed by opponents	09.01.2024
6	The date on which the order was passed on the said application	23.08.2024

(Vishwanath A.)
C/c Addl. Civil Judge & JMFC.,
Mudigere.

**ORDERS ON IA NO.III**

The plaintiff has filed the present application under Order I rule 10(2) r/w Section 151 of CPC, at the stage of hearing on IA No.I. This application is filed seeking permission to implead the proposed defendant as defendant No.4 to this Suit.

2. One Sundar claiming to be the director of plaintiff company has filed his affidavit in support of the present application wherein contended that the proposed defendant was the GPA holder of defendant No.1 to 3 as per registered GPA dated 27.07.2022. On basis of said GPA, the proposed defendant has executed MOU to sell the suit properties, in favour of plaintiff. The defendant No.2 and 3 with an ulterior motive so as to defeat the MOU executed by the proposed defendant, they have entered personal appearance before this Court. Thus, under the circumstances, the proposed defendant is necessary party to this suit. On these averments, the plaintiff has sought for allowing the present application.

3. On notice of the above application, the proposed defendant having entered appearance through his learned counsel, has submitted that he has no objections to the present application.

4. The defendant No.1 to 3 who have filed their statement of objections to the present application, have resisted the same on the ground that the present application is not maintainable as the same is filed by one Mr. Sundra, without producing board resolution to show that he is authorised to file this application. The plaintiff has filed this suit with collusion of proposed defendant just to have wrongful gain and to cause wrongful loss to the defendants. The address of plaintiff Company and the proposed defendant are one and the same. The



proposed defendant is one of the directors of the plaintiff company and thus the plaintiff has instituted the suit and managed that the suit summons be served on the proposed defendant. The appearance put on by the proposed defendant as GPA holder of defendants, is rejected by this Court on the grounds that the defendants have themselves put on personal appearance. The order of not accepting the appearance of proposed defendant was challenged in W.P. No. 25007/2023 (GM-CPC) before the Hon'ble High Court of Karnataka, and the said writ petition was dismissed as withdrawn.

5. The defendant No.1 to 3 have further contended that they have revoked the GPA executed in favour of proposed defendant, as he had acted in such a manner to cause harm to the defendants. Such acts of proposed defendant cannot be ratified as per the contract act and the very intention of plaintiff and its associate the proposed defendant is to have wrongful gain of the defendants' properties. The MOU dated 12.04.2023 is a concocted document just to cause wrongful loss to the defendants. After the writ petition was dismissed, the proposed defendant has presented one of the cheque issued to his associate Mr. Srinivasan Ramachandran by filling the said cheque for Rs.15,56,00,000/- and when the cheque was returned as payment stopped, the proposed defendant has got issued a legal notice for which the defendants have submitted the reply dated 11.11.2023. This is a suit for bare injunction and therefore, the proposed defendant is not a necessary party and need not be impleaded. If the present application is allowed, then great hardship and inconvenience will be caused to them. On these grounds, the defendants have sought for rejection of the application.



6. Having heard the learned counsels appearing for respective parties, this Court has carefully perused the entire materials on record. The points that arise for consideration are as under:

- 1) Whether the plaintiff has made out sufficient grounds that the proposed defendant is either proper or necessary party to this Suit?
- 2) What Order?

7. The answers of this Court on the above points are as under:

Point No.1: In the Negative

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

REASONS

8. Point No.1: In the present suit filed seeking bare injunction with respect to the suit properties, the plaintiff has asserted regarding passing of possession of said properties by the defendants through MOU executed by their GPA holder, and alleged interference by them. Though the present suit was institution against the defendant No.1 to 3 represented by their GPA holder Mr.Mohammed Hariss. But, on issuance of summons, the very defendant No.2 and 3 have entered appearance for themselves and for defendant No.1 Firm, by submitting that they have revoked the GPA executed in favour of said Mr.Mohammed Hariss. This Court by its order dated 07.09.2023, while rejecting the appearance of said GPA holder, has accepted the personal appearance of defendant No.2 and 3. It is then, the present application came to be filed by the plaintiff seeking permission to implead the then GPA holder of defendant No.1 to 3 i.e., Mr. Mohammed Hariss, as defendant No.4 to this suit.



9. As noted earlier, the proposed defendant has got no objections on the present application, whereas, the defendant No.1 to 3 are resisting the present application by pleading collusion between the plaintiff and proposed defendant. In this regard, the defendant No.1 to 3 have submitted that the address of plaintiff and proposed defendant, are one and the same and to show this, the defendants have produced Company master data of Assa Real Estate Private Limited and Bluechip Services (International) Private Limited to which the proposed defendant is one of the directors. The addresses of both these companies are one and the same i.e., 18, 7th Main Road, HRBR Layout, Kalyanagar, Bangalore. The master data of Sally Thermoplastic India Limited would disclose that the proposed defendant as well as the one of the director of plaintiff Company are the directors of said company.

10. Admittedly, the defendant No.1 to 3 have executed GPA in favour of proposed defendant and now as per the defendants, the said GPA is revoked for the reason that the proposed defendant had acted in such a manner to cause harm to the defendants. As per the plaintiff, the defendants have executed the MOU through their GPA holder the proposed defendant and under the said MOU, the possession of suit properties were delivered to the plaintiffs. The general rule regarding impleadment of parties to the suit is that the plaintiff in a suit, being *dominus litis*, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. But this rule is subject to the provision of Order I rule 10 of CPC. Herein the present case, the plaintiff is seeking impleadment of proposed defendant on the only ground that he is necessary party as he being the GPA holder of



defendant, has executed MOU in its favour whereby delivered the possession of suit properties.

11. Hon'ble Apex Court in the case of **Anil Kumar Singh V. Shivanath Mishra**¹ has held as under:

"7. By operation of the above-quoted rule though the Court may have power to strike out the name of a party improperly joined or add a party either on application or without application of either party, but the condition precedent, is that the Court must be satisfied that the presence of the party to be added, would be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit. To bring a person as party defendant is not a substantive right but one of procedure and the Court has discretion in its proper exercise. The object of the rule is to bring on record all the persons who are parties to the dispute relating to the subject matter so that the dispute may be determined in their presence at the same time without any protraction, inconvenience and to avoid multiplicity of proceedings."

(Emphasis added)

12. Order I rule 10(2) of CPC enables to add the party either if he is a proper party to the suit without whom the suit cannot be adjudicated or necessary party whose presence is necessary to adjudicate on all questions involved in the suit. Herein this case, admittedly, the defendant No.1 to 3 have executed GPA in favour of proposed defendant, who as per the plaintiff, has executed the MOU on behalf of defendant No.1 to 3 on the strength of GPA and thereby handed over the possession of suit properties to the plaintiff. Though the defendant No.1 to 3 stated to have revoked the GPA executed in favour of proposed defendant, contended that the MOU executed in

¹ (1995) 3 SCC 147



favour of plaintiff is concocted and the plaintiff as well as proposed defendant are colluded to have wrongful gain of the defendants' properties. But, these aspects are matter of trial and cannot be dealt with while considering the present application.

13. The rule of *dominus litis* though supports the plaintiff in its suit, but the said rule is subject to rider of the Order I rule 10(2). As held by the Hon'ble Apex Court in the case of **Anil Kumar Singh** supra, the Court must be satisfied that the presence of the party to be added, would be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit.

14. Our Hon'ble High Court in the case of **Abdul Jallel V. Aishabi**² has held as under:

11. XXX . The expression 'to settle all questions involved' used in Order 1, Rule 10(2)) CPC is susceptible of liberal and wide interpretation so as to adjudicate all the questions pertaining to the subject-matter thereof. The Parliament in its wisdom while framing this rule must be held to have thought that all the material questions common to the parties to the suit and to the third parties should be tried and once for all and the Court is clothed with the power to secure the aforesaid result with judicious discretion to add parties, including third parties. As could be gathered the intendment and object of the provisions from the proper interpretation of the language used therein, appears to me, to adopt liberal construction to enable the Court to determine all questions relating to the subject-matter of the suit arising not only between the parties to the suit but also the third party whose presence before the Court is necessary or proper for an effective and final adjudication.

(Emphasis added)

2 AIR 1992 Karn. 380



Keeping in view the above decision of our Hon'ble High Court, if the case on hand is looked into, the present suit being one for bare injunction against the defendants, in which the plaintiff has asserted its possession over the suit property and alleged obstruction by the defendant No.1 to 3. It is for the plaintiff to prove its possession over the suit properties as on the date of suit and that the alleged interference by the defendant No.1 to 3. Further, the only ground urged by the plaintiff to add the proposed defendant, is that the proposed defendant who is the GPA holder of defendants has executed the MOU in favour of plaintiff, under which the possession of suit properties were handed over. The plaintiff has sought no relief against the proposed defendant. Such being the case, there are no materials question common to the parties to the suit as well as proposed defendant. For the forgoing, this Court is of consideration that the proposed defendant is neither the proper nor the necessary party to this suit. Hence, Point No.1 is answered in **Negative**.

15. Point No.2: In view of the reasons recorded on Point No.1, this Court considers it fit to reject the above application. Hence, the following:

ORDER

I.A.No.III filed by the Plaintiff under Order 1
Rule 10(2) R/w Section 151 of Code of Civil
Procedure is hereby rejected.

For hearing on IA No.I by: 10.09.2024.



(Dictated to the Stenographer, typed by him on computer, corrected and then pronounced by me in the open court on this the 23rd day of August 2024).

(Vishwanath A.)

C/c Addl. Civil Judge & JMFC.,
Mudigere.

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