

ORDER ON I.A. No.II

The applicants Sri. K.M. Ramegowda and Sri. Chandregowda children of Mariyagowda, aged about 56 years and 48 years respectively, r/o. Bedakki village, Devarapalu, Kalasa Post, Mavinakere village, Mudigere Taluk, have filed the application u/o. I rule 10(2) of CPC to implead them as defendant No.3 and 4 to the case.

2. In support of the application applicant No.1 filed affidavit, submitted, applicant No.2 is his younger brother. The plaintiff has filed the suit for

permanent injunction against the defendants to restrain them from interfering with his peaceful possession and enjoyment of the suit schedule property. The applicants are having landed properties and residential house in Sy.No.408, 409 and 411 of Mavinakere village, to reach their landed property the Sy.No.411 of Mavinakere village, they are using the road having the width of 12 feet and runs from East to West by the side of Kalasa-Kudaremurkah state highway in Sy.No.407/4 and 409 of Mavinakere village, from time immemorial. The plaintiff is very much aware of the said road and state highway, however suppressing the state highway and the road in suit schedule property filed the suit to have wrongful gain. Now with the help of ex parte injunction is trying to close the road and causing inconvenience to the applicants and villagers. Hence, the application and prays to allow the application.

3. The plaintiff has filed the objection, submitted the application is not maintainable either in law or on facts. The suit is for permanent injunction against the defendant No.1 and 2, no relief against the applicants. Therefore, the application is not maintainable. The reasons mentioned in the affidavit filed in support of the application are all false, the

applicants have no relationship with suit schedule property. In suit schedule property no road is exist and it is created for the purpose of the application. When applicants intentionally meddling with plaintiff's property, he filed suit against the applicants for permanent injunction in O.S.No.8/2021 and it is pending. Hence, prays to reject the application.

4. Heard advocate for applicant and plaintiff, perused the application and records.

5. Upon hearing of advocate for applicant and plaintiff and on perusal of records, the point for consideration as hereunder:

Whether the applicants are the necessary parties to the suit?

6. My findings on the above point is in the "**Negative**" for the following

REASONS

7. The plaintiff filed the suit for permanent injunction to restrain the defendants from interfering with his peaceful possession and enjoyment of property bearing Sy.No.407/4 totally measuring 33 guntas out of which 15 gunta more fully described in the schedule of the plaint. In the plaint it is asserted

defendants are trying to encroach upon suit schedule property and dispossess the plaintiff. In the application applicants asserted that in Sy.No.407/4 a mud road is exist and it leads to property of applicants in Sy.No.411 of Mavinakere village. The plaintiff has suppressed the existence of road, thereby attempted to have wrongful gain and causing inconvenience to the applicants. This fact is denied by the plaintiff and more particularly the existence of road. When such is the case the applicants is required to file a comprehensive suit for declaration to declare in Sy.No.407/4 the road is exist and it has been in use by the applicants from time immemorial and they have right to use the road. The suit is for permanent injunction against the defendants by the plaintiff is to protect his possession. Therefore, the applicants are no way concerned to the cause of action alleged in the suit and the cause on which the application is filed warrants separate suit to be filed. Hence, the applicants are not necessary parties or proper parties to the suit to decide the plaintiff possession and interference of defendants. Hence, I answer the above point in the '**Negative**' and I proceed to pass the following.

ORDER

I.A.No.II filed by the plaintiff U/o.I rule 10(2) of CPC is hereby rejected.

Call on for arguments on I.A.No.I by
14.02.2022.

sd/-

(J.KRISHNA)
C/C. ADDL. CIVIL JUDGE & JMFC.,
MUDIGERE.