



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

DATED: THIS THE 30th DAY OF SEPTEMBER 2024

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

ORIGINAL SUIT No: 102/2023

BETWEEN :

- 1.** Smt.Gopamma,
Aged about 85 years,
W/o late M.D.Duggappagowda.
- 2.** Sri.M.S.Cheluvayya,
Aged about 77 years,
S/o late Sheshaiah,
Agriculturist.

Both are R/o Malemane,
Malemane Village,
Javali Post, Balur Hobli,
Mudigere Taluk.

Plaintiff No.2 for himself and
as GPA holder for plaintiff No.1.

.... Plaintiffs

(By Sri.M.V.Jayaraj, Adv.,)

AND :

Smt.Vishalakshi,
Aged about 45 years,
W/o late Annappa,
R/o Malemane,
Malemane Village,
Javali Post, Balur Hobli,



Mudigere Taluk.

... Defendant

(By Sri.K.M.Prashanth, Adv.,)**PARTIES ON I.A.NO.II****BETWEEN :**

Smt. Vishalakshi

... Applicant

AND :

Smt.Gopamma & Anr.

... Opponents

i	Provision under which the application is filed	Order 1 Rule 10 R/w Sec. 151 of CPC
ii	Relief sought for	Implead the proposed plaintiff as plaintiff No.3
iii	The date on which the application is filed	26.10.2023
iv	Number of the application	II
v	The date on which the objections are filed by different opponents	02.01.2024
vi	The date on which the orders were passed on the said application	30.09.2024

(Vishwanath A.)C/c Addl. Civil Judge & JMFC,
Mudigere.**ORDERS ON I.A.NO.II**

The defendant has filed the present application along with her counter claim. This application is filed under Order I rule 10(2) of



CPC seeking to implead the person named in the present application as Plaintiff No.3 in this suit.

2. The defendant has filed her affidavit in support of the present application wherein contended that the Javali-Malemane Road is situated on the northern side abutting to the properties in Sy. No.52/19 and 52/20. She is making use of a strip of her own land in Sy. No.52/20 and the same is neither a pathway nor road meant for public at large. The plaintiffs with an idea and intention of disturbing the cultivation and peaceful possession of the defendant over her land, they have approached this Court with a false and fictitious story of 'Road' and in order to fulfil their illegal ambition and desire, they have obtained the interim relief of injunction. Under the guise and in violation of said interim injunction, on 21.10.2023, the plaintiff No.2 making use of the name of plaintiff No.1 and in association with his son-in-law by name H.S. Poornesh, made frivolous attempt to commit trespass into the written statement schedule property from its northern side and tried to pour Jalli stones and to form a road but they could not succeed on their venture because of the timely intervention and loud protest of the defendant.

3. The defendant has further contended that the threat of plaintiff No.2 in the name of plaintiff No.1 and the atrocity in collusion with the said H.S.Poornesh is still continuing. The complaint made to the Balur Police yielded no result as they have been won over by the plaintiffs. Finding no other alternative, she has approached this Court with counter claim for necessary relief to



protect her possession over the land belonging to her. Thus, the said H.S. Poornesh is necessary party to the suit and she has arrayed the said H.S. Poornesh as opponent No.3 in the counter claim and sought relief against the said person. Without his presence, the counter claim cannot be effectively adjudicated and thus the impleading of said H.S. Poornesh as plaintiff No.1 is felt to be just and necessary. On these averments, the defendant has sought for allowing the application.

4. On notice of the above application, the proposed plaintiff has entered appearance through his counsel and filed the statement of objections to the present application wherein contended that the allegations made against him are baseless and made only with an intention to harass him. The defendant has sworn to the false affidavit. He has further contended that he is the son-in-law of plaintiff No.2 and he is residing at Vidhyanagar of Mudigere Town. The road in dispute is situated more than 40 kilometres away from his residence. He is visiting the house of plaintiff No.2 to take care of the plaintiffs, as he is the son-in-law of the plaintiff No.2 and the plaintiffs are old aged persons, but he has not involved in any acts with the plaintiffs as alleged by the defendant. He has not made any attempts to trespass into the written statement schedule property. Already there exists a road and thus forming a road does not at all arise. The defendant has filed the present application to avoid him from visiting the house of plaintiffs. The defendant herself is trying to block the road and she is dumping the waste soil over the drainage in the said road. At no point of time, the plaintiffs have poured or dumped the stone alleged by the defendant. The



defendant has not made out proper reasons to allow the present application. On these averments, the proposed plaintiff seeks for rejection of the application.

5. Having heard the learned counsel for respective parties, this Court has carefully perused the entire materials on record. The points that arise for consideration is as under

1. Whether the defendant has made out sufficient grounds that the proposed plaintiff is necessary party to this suit?

2. What order?

6. 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

7. POINTS No.1: In this suit, the plaintiffs is seeking for the relief of bare injunction against the defendant with respect to the suit properties among which the suit 'B' schedule property is stated to be the road to reach suit 'A' schedule property. To the contrary, the defendant having contended that she is making use of strip of her land to reach the Malemane-Javali Road from her house and the said land is not the pathway or road meant for public at large, she has alleged obstruction from the plaintiffs as well as the proposed plaintiff. On such allegations, she has filed the counter claim against them seeking the relief of bare injunction with respect to the written



statement schedule property which admittedly situated adjacent to the plaint schedule property. The only ground urged in support of the present application is that, since the defendant has filed counter claim against the proposed plaintiff as well, the said counter claim cannot be effectively adjudicated without impleading the proposed plaintiff as he is the necessary party.

8. The proposed plaintiff admittedly the son-in-law of the plaintiff No.2 and resident of Vidhyanagar, Mudigere, is stated to have been visiting the house of plaintiffs to look after them. In this case, the plaintiffs claim is that the defendant is obstructing the road to reach the plaint 'A' schedule property while the defendant has contended that there is no road as such and it is the strip of her land to reach the Malemane-Javali Road from her house and the said land is not pathway or road meant for public at large. Learned counsel for defendant in support of the present application has placed his reliance on the decision of Hon'ble Apex Court in the case of **Ramesh Hiranand Kundanmal Vs Municipal Corporation of greater Bombay & Ors**¹ and the decision of Hon'ble Bombay High Court in the case of **Ashok Vs The State of Maharashtra**². This Court has carefully read the said decisions and with great respect to the Hon'ble Apex Court as well as to the Hon'ble Bombay High Court, the said decisions are not applicable to the case on hand as the factum and circumstances of the said case are totally different to the case on hand. The short question that arise for consideration of this application is that can there be impleadment of a third party

1 1992 SCC (2) 524

2 WP No. 10493/2022 DD 11.10.2022.



as so to adjudicate the counter claim. For answering this, we have to see whether there can be a counter claim against the third party to the suit.

9. On careful reading of Order VIII rule 6A of CPC, it can be understood that the counter claim shall only be against the plaintiff or plaintiffs and not even against co-defendant. In this regard, this Court finds it relevant to refer the 3-judge bench decision of Hon'ble Apex Court in the case of **Satyender Vs Saroj**³, wherein it is held as under:

"The Legislature permits the institution of a counter claim, in order to avoid multiplicity of litigation. But then it has certain limitations such as that the counter claim cannot exceed the pecuniary limits of the jurisdiction of the court, and that such counter claim must be instituted before the defendant has delivered his defence or before the time limit for delivering his defence has expired. More importantly, such a counter claim must be against the plaintiff!"

"Emphasis added"

Hon'ble Kerala High Court in the case of **K.Sheela Vs State Bank of Travancore**⁴, in the similar circumstances of the case, has held as under:

"4. xx . In short, at the instance of defendant, who had raised the counter claim, there cannot be any impleadment of an additional party either as a counter claim defendant or otherwise except under Order XXII C.P.C. Hence, the impleadment of additional counter claim defendant by the trial court is so erroneous and is legally unsustainable."

"Emphasis added"

³ 2022 SCC OnLine SC 1026

⁴ RFA No.498/2013 DD 15.02.2022



Hon'ble Panjab-Haryana High Court in the case of **Kehar Singh Vs Hukam Singh And Another**⁵, in the similar circumstances of the case, has held as under:

"On the other hand, Order 8 Rule 6-A CPC stipulates that counter-claim can be set up by defendant against the plaintiff. The expression 'against the plaintiff' used in the aforesaid provision is highly significant for the purpose of this revision petition. The aforesaid expression would depict that counter-claim has to be made against the plaintiff only and not against the third party. Consequently, a third person cannot be added as a new party to the suit for adjudicating counter-claim because counter-claim has to be confined against the plaintiff only."

"Emphasis added"

10. On careful reading of the decisions in the case of **Satyender, K.Sheela and Kehar Singh, supra**, it is thus clear that there can be counter claim against the plaintiffs alone and not against the third parties and that a third party cannot be added as new party to the suit for adjudicating the counter-claim. Under the circumstances, the sole ground urged by the defendant in support of the present application, holds no water. Even otherwise, the specific allegation of defendant is that the proposed plaintiff who is the resident of Vidhyanagar, Mudigere, claiming under plaintiff No.2 is obstructing her possession over the written statement property situated at Malemane Village, Balur. In her counter claim, the defendant has sought for the relief of permanent injunction against the plaintiffs, their men, agents, servants anybody claiming through them. Under the circumstances the proposed party is neither necessary nor proper party to be added to the suit for the purpose

⁵ CR No.6465/2013 DD 25.10.2013



of adjudication of the claim as well as counter claim and accordingly, the Point No.1 is answered in **Negative**.

11. POINT No.2: For forgoing reasons recorded on the above point No.1, this Court is of view to reject the present application and hence, the following.

ORDER

IA.No.II filed by the defendant under Order I rule 10(2) r/w Sec.151 of Code of Civil Procedure, is hereby rejected.

In view of the above, the defendant is directed to delete the name of proposed plaintiff in the counter claim and file the amended counter claim in that regard.

(Dictated to the Stenographer, typed by him on computer, corrected and then pronounced by me in the open court on this the 30th day of September, 2024).

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

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