

**IN THE COURT OF THE CIVIL JUDGE AND ADDITIONAL
J.M.F.C., AT TARIKERE**

Present : SMT.PAVITHRA.M.D, B.A., LL.B.,
Civil Judge & Addl. JMFC. Tarikere.

O.S.No.197/2019
Dated this 19th day of August 2020

- Plaintiffs** :
1. Shivanna.T.H,
S/o Late Hanumaiah,
Aged about 70 years.
 2. T.S.Basavaraj,
S/o Shivanna.T.H,
Aged about 48 years.
 3. T.S.Ravi S/o Shivanna.T.H,
Aged about 40 years.

All are Agriculturists,
R/o Panchakallaiah Street,
Tarikere Town,
Tarikere Taluk,
Chikkamagaluru District

(Reptd. By : Sri.C.B.Vishwanath-Advocate)

V/s

- Defendants:**
1. Nagarathnamma,
W/o Revanna,
D/o T.R.Eshwarappa,
Aged about 38 years,
Agriculturist,
R/o Channapura Village,
Ajampura Hobli & Taluk.
 2. R.Ramachandrappa,
S/o Ramaiah,
Aged about 70 years,

Agriculturist,
R/o Gowdahanumaiah Street,
Tarikere Town & Taluk.

3. Anusuyamma,
W/o Sathyanarayana,
Aged about 50 years,
Agriculturist,
R/o Near Chowdeshwari Temple,
Chowdeshwari Colony,
Tarikere Town & Taluk.

4. Veena W/o Jayanna,
Aged about 35 years,
Agriculturist,
C/o Guruvanna,
R/o Nagappa Colony,
Tarikere Town & Taluk.

(Reptd. By : D1-Sri.D.Annappa Naika-Advocate)
D2-Sri.B.N.Kiran Kumar-Advocate)
D3-Sri.M.K.Thejamurthy-Advocate)

I.A.

Applicants in I.A/: 1. T.E.Eranna,
Proposed Defendants S/o late Eshwarappa,
Aged about 55 years,
Agriculturist.

2. T.E.Anandappa,
S/o late Eshwarappa,
Aged about 52 years,
Agriculturist.

Both are R/o Machenahalli Layout,
Tarikere Town, Tarikere Taluk.

-Vs-

Opponents in IA/: T.H.Shivanna & Ors.
Plaintiffs

ORDERS ON IA.

The applicants have filed this application U/Or.1 Rule 10(2) of CPC to implead them as defendant No.5 and 6 in the present case.

2. It is averred in the affidavit annexed to the application that, the present suit is filed for the relief of declaration and permanent injunction in respect of right of way. The 1st defendant who is the younger sister of the proposed defendants had filed a suit in OS.No.24/2000 on the file of this Court for the relief of partition in respect of the land bearing Sy.No.21/3 measuring 1 acre 23 guntas against the proposed defendants. The said suit was decreed and final decree also drawn by this Court in FDP.No.3/2003 and as per the report of the Court Commissioner, an extent of 1 acre 7 $\frac{1}{4}$ guntas was allotted to the proposed defendants and towards northern side of their property, an extent of 15 $\frac{3}{4}$ guntas was allotted to the 1st defendant. The plaintiff had filed the present suit seeking right of way through the land of the 1st defendant which is described in the plaint 'C' schedule. But, the plaintiffs have shown the wrong boundaries to the suit 'C'

schedule property claiming a road which commences from Jambadahalla Canal Road and which runs towards east to west through Sy.No.21 of 'C' schedule which belongs to the 1st defendant. The plaintiffs have filed the present suit suppressing the true facts and they obtained an order of temporary injunction vide order dated 09.09.2019. Under the guise of the order dated 09.09.2019, the plaintiffs tried to remove the gate installed in the property of proposed defendants. The 1st defendant is noway concerned to the plaint 'C' schedule property. The plaintiffs have claimed the easementary right of way passing through the land of the proposed defendants without any easementary right and right of way can be declared only when servient owner is a party to the suit. Under these circumstances, it is just and necessary to implead the proposed defendants as defendant No.5 and 6 in the present suit. Hence, this application.

3. The plaintiffs have filed their objection statement stating that, the application filed by the proposed defendant is not maintainable either in law or on facts. They further stated that, defendant No.2 purchased 4 guntas of land out of

1 acre 23 guntas in the land bearing Sy.No.21/1 of Jodi Govindapura village from the father of the proposed defendants under the Registered Sale Deed dated 05.06.2002. The proposed defendants suppressed the information regarding the sale of property in favour of defendant No.2. The plaintiffs are not party to the suit and they are not aware about the suit in OS.No.24/2000 or FDP.No.3/2003. Even as per the sketch pertaining to the land bearing Sy.No.20/1, southern portion is allotted to the joint share of the proposed defendants and their father Eshwarappa and the property purchased by the 2nd defendant falls within the area allotted to them. Further, suit 'F' schedule road is a part and parcel of property purchased by the 2nd defendant and the same is being used as road by the plaintiffs and the 2nd defendant. The father of the proposed defendants has sold the property measuring 4 guntas on which the proposed defendants have no right or not entitled to come on record as they have not retained any right in respect of 4 guntas. Therefore, the applicants are not servient owner of 4 guntas and as such, they neither necessary nor proper party to the present suit. The 2nd defendant being servient owner is already on record.

They further stated that, if southern portion of property in Sy.No.21/1 where 'F' schedule road runs is not allotted to the 1st defendant, the plaintiffs have resolve their right to amend their pleading and the same will not cause right for the proposed defendants to implead as parties in the present suit. Hence, they prayed to dismiss the application with exemplary cost.

4. On the strength of application, objection of the plaintiffs, the points which arise for consideration of this Court are as follows:-

- 1) Whether the proposed defendants are necessary or proper parties to the present suit?
- 2) What order?

5. Heard the arguments canvassed by the counsel for the proposed defendants and the plaintiffs. Perused the materials available on record and now my findings on the above points are as follows:-

Point No.1 : In the Affirmative

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

REASONS

6. **Point No.1:** The plaintiffs have filed the present suit for the relief of declaration to declare that, they have got right of way of 'F','G','H' schedule road passing through the lands of the defendants to reach their 'A' and 'B' schedule properties by way of easement by necessity and consequential relief of permanent injunction to restrain the defendants from causing obstruction, otherwise disbursing of plaintiffs right of way over 'F,G,H' schedule road.

7. It is the stand of the plaintiffs that, suit 'A' 'B' and 'C' schedule properties were allotted to them under the registered partition deed dated 18.05.2019. It is the further stand of the plaintiffs that, one Eshwarappa was cultivating the land measuring 4 acres 18 guntas in Sy.No.21 of Jodi Govindapura village as a tenant and the Land Tribunal has granted the said land in his favour and after his demise, his children got divided the properties and in the said partition, suit 'C' schedule property was allotted to the 1st defendant. It is further stand of the plaintiffs that, the 2nd defendant has purchased the land to an extent of 5 acres 31 guntas in the

land bearing Sy.No.18 of Jodi Govindapura village from one T.S.Sathyanarayana and his brothers and thereafter, there was a partition in the family of the 2nd defendant and in the said partition, the land to an extent of 4 acres 38 guntas, out of 5 acres 31 guntas is allotted to the share of the 2nd defendant which is described as suit 'B' schedule property. It is further case of the plaintiffs that, suit 'F' schedule road is a part and parcel of suit 'C' schedule property and suit 'G' schedule road is a part and parcel of suit 'D' schedule property. The plaintiffs submitted that, except suit 'F,G,H' schedule road, there is no other alternative road to reach their lands and hence, they acquired right of easement by necessity over 'F,G,H' schedule road. The defendants have denied the existence of suit 'F,G,H' schedule road. When the present case is set-down for the plaintiff's evidence, the proposed defendants came up with the present application U/Or.1 Rule 10(2) of CPC to implead them as defendant No.5 and 6 in the present suit.

8. It is the case of the proposed defendants that, in OS.No.24/2000 and FDP.No.3/2003, the land to an extent of

1 acre 7 $\frac{1}{4}$ was allotted to the proposed defendants and towards northern side of their property, an extent of 15 $\frac{3}{4}$ guntas was allotted to the 1st defendant. It is their further case that, the 1st defendant is noway concerned to the plaint 'C' schedule property and they have claimed an easementary right of way passing through the land of proposed defendants without any easementary right and right of way can be declared only when servient owner is a party to the suit. Wherefore, they prayed to implead them as defendant No.5 and 6 in the present suit. On the other hand, the plaintiffs resisted the application on the ground that, the 2nd defendant has purchased the land to an extent of 4 guntas, out of 1 acre 23 guntas in Sy.No.21/1 of Jodi Govindapura village from the father of proposed defendants under the registered sale deed dated 05.06.2002 and the property purchased by the 2nd defendant falls within the area allotted to the proposed defendants and their father Eshwarappa. They further contended that, suit 'F' schedule road is part and parcel of the property purchased by the 2nd defendant and hence, the proposed defendants have no right to come on record.

9. In the present case, the existence of suit 'F,G,H' road is in dispute. Now in order to consider the present application, it is necessary to know that, whether the alleged 'F' schedule road is in existence in the land allotted to the share of the proposed defendants and their father. The proposed defendants in support of their case have produced the certified copy of the order passed in FDP.No.3/2003 on the file of this Court. As it could be seen from the said order, the 1st defendant herein have filed a suit for partition in OS.No.24/2000 and as per the preliminary decree passed in OS.No.24/2000, the 1st defendant herein has filed the petition for final decree in FDP.No.3/2003 on the file of this Court. This Court considering the contention and the materials available on record partly allowed the petition vide order dated 27.02.2012. During the course of the above said final decree proceedings, the Court Commissioner had filed his report and sketch pertaining to the schedule properties therein. As per the sketch pertaining to the land bearing Sy.No.21/1 of Jodi Govindapura village, the alleged suit 'F' schedule road is in existence in the land which is allotted to the share of the proposed defendants and their father

Eshwarappa. As per the sketch prepared by the Court Commissioner, the land to an extent of 1 acre 7 ¼ guntas which is shown as block No.1 is allotted to the share of the proposed defendants and their father. The plaintiffs have not seriously disputed the said fact. But they contended that, the land which is allotted to the share of the proposed defendants is purchased by the 2nd defendant herein. In support of their case they have filed the certified copy of the sale deed dated 05.06.2002. The recitals of the said sale deed clearly shows that, the 2nd defendant has purchased the land to an extent of 4 guntas out of 1 acre 23 guntas in the land bearing Sy.No.21/1 of Jodi Govindapura village. Further, the said sale deed clearly reveals that, the remaining land in Sy.No.21/1 is retained by the father of the proposed defendants. It is not in dispute that, the proposed defendants are the sons of the vendor of the 2nd defendant. Though, the counsel for the plaintiffs argued that, the alleged suit schedule road is in existence in the land purchased by the 2nd defendant, but at present, no sufficient materials available on record to know the actual location of the property purchased by the 2nd defendant. Moreover, the vendor of the 2nd

defendant has retained to some extent of the land in bearing Sy.No.21 of Jodi Govindapura village. For adjudication of the said dispute, the presence of the proposed defendants is very much necessary in the present suit. Prima-facie the materials available on record reveals that, the proposed defendants are servient. So much so, without impleading the servient owner of the property through which the right of easement is claimed, it is not proper nor correct for the Court to adjudicate the right of easement claimed over that land. A right of easement can be declared only when the servient owner is a party to the suit. For that solitary reason itself, this Court is of the opinion that, the proposed defendants are the necessary parties to the present suit. Accordingly, I answer point No.1 in the Affirmative.

10. **Point No.2:** In view of the foregoing reasons and conclusion arrived at point No.1, the application filed by the proposed defendants deserve to be allowed. Hence, I proceed to pass the following:

ORDER

The application filed by the proposed defendants under Order 1 Rule 10(2) of C.P.C is hereby allowed.

Resultantly, the proposed defendants are hereby impleaded as defendant No.5 and 6.

No order as to cost.

(Direct Dictation given to the Stenographer, typed by him, corrected by me and then pronounced in the open Court on this the 19th day of August 2020.)

Sd/-

**(PAVITHRA.M.D)
CIVIL JUDGE AND
ADDL.J.M.F.C., TARIKERE.**