

**IN THE COURT OF SENIOR CIVIL JUDGE AND JMFC,
KOLLEGALA.**

Dated 29th day of October, 2025

O.S. No. 66/2022

Plaintiffs : Mahesh & another

Vs.

Defendants : Mahadevaswamy & others

I.A. No. VIII

Applicant : S. Shanthamurthy - Proposed defendant
S/o T. Shivaswamy,
Aged about 59 years,
R/o Uddanuru village,
Hanur Taluk,
Chamarajanagar District.

Vs.

Opponent : Mahesh & another - Plaintiffs

ORDERS ON I.A. No. VIII

The I.A. No. VIII under Order I Rule 10(2) of the CPC on 07.12.2024 seeking to implead himself as proposed defendant No. 4 in the present suit filed by the plaintiff for the relief of specific performance of the registered agreement of sale dated: 24.07.2019 executed

by the defendants in favour of the plaintiff in respect of the suit schedule properties.

2. In the accompanying affidavit, the applicant contends that the suit schedule properties are the ancestral properties belonging to himself and the defendants, who are none other than his brother, sister-in-law, and their children. It is alleged that the defendants, behind his back, executed the registered agreement of sale dated: 24.07.2019 in favour of the plaintiff and that the present suit for specific performance has been filed to enforce the said agreement without impleading him, though he has a right and interest in the said properties.

3. The applicant further submits that he has already instituted O.S. No. 356/2022 before the Court of the Addl. Civil Judge and JMFC, Hanur, seeking partition and separate possession of the very same ancestral properties, in which the present plaintiffs are arrayed as defendant Nos. 6 and 7. It is submitted that the said suit is pending adjudication and the present plaintiffs have not yet filed their written statement therein. He states that he came to know about the present suit only

recently and, being a co-parcener and co-owner, he is a necessary and proper party for the effective adjudication of the matter. Non-impleadment of the applicant, he contends, would cause serious prejudice and hardship to him. Hence, he prays to allow the application.

4. The plaintiff has filed objections on 15.01.2025 opposing the application contending that the same is not maintainable either in law or on facts. It is contended that the applicant has no subsisting right to come on record as a party, as the present suit is one for specific performance of a bilateral contract between the plaintiff and the defendants under the registered agreement of sale dated: 24.07.2019. It is further submitted that the applicant is not a party to the said agreement, there is no priority of contract between the plaintiff and the applicant, and hence his presence is not necessary for effective adjudication of the dispute.

5. The plaintiff admits that O.S. No. 356/2022 is pending before the Addl. Civil Judge and JMFC, Hanur, and submits that any right, title, or interest claimed by the applicant will be adjudicated in the said partition suit, and not in the present suit for specific performance. It is further submitted that the present application is

filed only to delay and harass the plaintiff and the same deserves to be dismissed.

6. Heard the arguments of both sides and perused the materials on record.

7. The following point arise for my consideration:

1) *Whether the applicant/proposed defendant has made out any ground to allow the application?*

2) *What order?*

8. My findings to the above points are:

Point No.1: In the negative

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

REASONS:

9. Point No.1: The suit on hand is filed by the plaintiff for specific performance of the agreement of sale dated: 24.07.2019 said to have been executed by the defendants in his favour. The applicant admittedly is not a party to the said agreement. The relief claimed in the suit is purely contractual in nature and is based on the alleged failure of the defendants to perform their obligations under the agreement. The issue to be adjudicated is whether the plaintiff is entitled to enforce the said contract as against the executants thereof.

10. The applicant's contention that the suit properties are ancestral and that he has filed a separate suit for partition (O.S. No. 356/2022) cannot make him a necessary party to the present proceedings. The determination of rights in ancestral property and the question of specific performance of a contract are distinct causes of action. The pendency of the partition suit will not have any bearing on the adjudication of the plaintiff's contractual rights arising out of the agreement of sale.

11. It is well-settled law that in a suit for specific performance, only the parties to the contract or those claiming under them are necessary parties. A third party, who is not privy to the contract, cannot be added as a defendant merely on the ground that he claims an independent title or interest in the property.

12. In the present case, since the applicant is not a party to the agreement dated: 24.07.2019 and no relief is sought against him, his presence is not necessary for the effective and complete adjudication of the issues arising in this suit. Any right or claim asserted by the applicant over the suit property can be effectively adjudicated in his own partition suit pending before the competent

court. Hence, I am of the considered view that the applicant is neither a necessary nor a proper party to the present suit, and his application deserves to be rejected. Accordingly **point No. 1 is answered in the negative.**

13. Point No. 2: For the aforesaid reasons, I proceed to pass the following:

ORDER

The IA VIII filed by the applicant/
proposed defendant under Order I Rule
10(2) of CPC seeking to implead himself
as proposed defendant No.4 is hereby
dismissed.

No order as to costs.

*(Dictated to the stenographer directly on the system, transcribed by her, corrected
and then pronounced by me in the open Court on 29th day of October, 2025).*

(SUNITHA)

Senior Civil Judge and JMFC,
Kollegala.