

**IN THE COURT OF THE CIVIL JUDGE & J.M.F.C.,**  
**JAGALUR**  
**AT: JAGALUR**

Present **SRI.CHETHAN R**

B.A.L, LL.B.,

Civil Judge & J.M.F.C., Jagalur

**O.S. No.87/2018**

**Dated this 21<sup>st</sup> day August 2024**

Ramanna S/o Sanna Thippayya

Age:85 years, Agriculturist,

R/o Thoranagatte, Jagalur Taluk.

.... Plaintiff.

**(By Sri.B.S., Advocate)**

-versus-

Sri Rama S/o Ramanjaneya

Age:45 years, Agriculturist,

R/o Thoranagatte, Jagalur Taluk.

.... Defendant.

**(By Sri.H.M.K., Advocate)**

**PARTIES TO I.A.NO.V**

T.Thippeswamy S/o Late.Murthappa

Age:76 years, Retired Engineer

R/o Thoranagatte village, Jagalur Taluk.()

...Applicant/ Proposed defendant No.2

V/s.

T.Ramappa

....Opponent/plaintiff

I	Provision under which the application is filed	Order I Rule 10 of C.P.C.
II	Relief sought for	Implead of proposed defendant No.2
III	The date on which the application is filed	17.03.2022
IV	Number of the application	I.A.No.V
V	The date on which the objections are filed by different opponents	----
VI	The date on which the orders were passed on the said application	21.08.2024

**:Order on I.A.No.V:**

The proposed defendant No.2 has filed this application U/o.1 Rule-10 of C.P.C., seeking permission to implead him as defendant No.2 in this case.

2. In support of the application, the proposed defendant No.2 has sworn an affidavit and it is averred that, the plaintiff has filed the suit against the defendant for the relief of permanent injunction in respect of suit schedule property. It is further stated that during the course of filing the suit the plaintiff has intentionally avoided him to be made as a party in this proceedings. The suit schedule property is purchased by his father Murthappa on 13.06.1979, from the grand mother of defendant his father was into possession of the schedule property

till his death after his death the proposed defendant has been continuing as a owner in the suit schedule property till date without any obstructions from anybody. Neither the plaintiff nor the defendant are the owners and in possession of the property. The plaintiff has created some revenue documents and filed this false suit against the defendant. It is further stated that earlier days one Gurappa had filed suit for declaration and injunction against the plaintiff and proposed defendant No.2 in OS.65/2002, in the said suit the proposed defendant seriously contested and the said suit was came to be dismissed on 02.09.2004 and the said Gurappa preferred the appeal before Hon'ble Senior Civil Judge, Davanagere in RA.No.265/2004 the said appeal also came to be dismissed. It is further alleged that the said facts are suppressed by the plaintiff and filed this suit inspite of knowing that the proposed defendant No2 is in possession over the suit schedule property. Hence he prays for allow the application and permit him to contest the matter on merits.

3. In contra the plaintiff filed the objections to the application, as per the objection the plaintiff contended that the suit is filed by the plaintiff for the relief of permanent injunction against the defendant. The proposed defendant No.2 is neither owner or not in possession he no where concerned with the plaintiff the proposed defendant No.2 has filed the application only to drag the matter. The plaintiff is in possession for morethan 60 years

without any obstruction from anybody. Since the defendant has obstructed the possession of the plaintiff. The plaintiff came to be filed this suit injunction against the defendant. The proposed defendant No.2 is neither a necessary party or proper party. Hence the proposed defendant no.2 is not necessary to implead in this case. Hence he prays to reject the application.

4. On the basis of rival contentions of the parties, the following points would arise for consideration:

1. Whether the proposed defendants No.2 is necessary party in order to decide the subject matter of this suit?
2. Whether applicant has made out grounds to allow the application?
3. What order?

5. I have heard both sides and perused the materials placed on record.

6. My answers on the above said points is as under :

Point No.1 : In Negative.

Point No.2 : In Negative.

Point No.3 : As per final order

for the following :

**:R E A S O N S:**

7. **POINTS NO.1 & 2:** On careful perusal of the materials placed on record, the present suit is filed by the plaintiff for the relief of permanent injunction against the defendant with respect to the suit schedule property.

8. It is necessary to note that, while deciding the application I Rule 10 to implead any person to the suit such person must show he being a necessary party or a formal party and in his absence the court cannot pass any effective decree and such party is required to decide the dispute involved in the matter effectively. The plaintiff being the Dominus litis to his suit. Admittedly the suit is for permanent injection the relief claimed by the plaintiff is against the defendant, with the cause of action that the defendant had obstructed his possession over the suit schedule property. Such being the case it would be burden on the plaintiff in order to prove his possession over the suit schedule property as on the date of filing the suit and alleged interference done by the defendant. Such being the case the proposed defendant No.2 would not be a necessary party for the just decision of the subject matter of this case.

9. During the course of hearing of application the counsel for proposed defendant No.2 submitted that in the earlier suit filed by one Gurappa in OS.65/2002 before this court in its judgment dated: 02.09.2004 has stated that the proposed defendant No.2 who was in

constructive possession over the suit schedule property of that case. Hence the proposed defendant No.2 may be permitted to contest this matter in merits, to prove his title and possession over the suit schedule property. He further relied upon decision of the **Hon'ble High Court of Karnataka Abdul Jaleel and others V/s Aisha Bi and others reported in ILR 1992 Karnataka 1156**. On going through the said decision with due respect the said decision is not applicable for this case as the Hon'ble High Court of Karnataka has decided the said case by allowing the impleading application filed by the proposed defendant in a suit for specific performance of contract and the proposed applicant in that case has able to show his title over the property previous to the contract between the parties in that case. But the facts in the present case is different. This suit is filed by the plaintiff for the relief of permanent injunction having specific cause of action against the defendant. Hence the above decision would not be applicable to the facts of the present case.

10. At this juncture this court would rely upon the decision of **Hon'ble High court of Karnataka in ManjuKumar V/s Venkatesh and others in Writ Petition 34376/2014**. In which the Hon'ble High Court of Karnataka the in para No.7:

**7. In a suit for injunction, the impleading applicant i.e., the petitioner herein is neither a proper nor necessary party. The plaintiff with a specific cause of action has filed the suit against the defendant against whom he alleges that he is interfering with his possession and enjoyment. It is for the plaintiff to prove his case against the defendant in the suit and not against any other person. In that view of the**

**matter, the trial court has rightly rejected the application filed under Order I Rule 10 of CPC. The trial court has not committed any error or illegality so as to interfere with the order passed by the trial court under Article 227 of the Constitution of India. Accordingly, the Writ Petition is dismissed.**

On going through the above decision the principle laid down would be applicable to the present case. As such in this case also the present suit filed by the plaintiff for seeking the relief of injunction having specific cause of action against the defendant. According to proposed defendant No.2 he is having right title over the property and he is in possession over the suit schedule property cannot be decided in this suit. If the proposed defendant is having any dispute regarding the title over the property against the plaintiff he can file separate suit against the plaintiff. The contention raised by the proposed defendant No.2 would not be necessary for the just decision of the subject matter in the suit. Considering the factual aspects of the case at any angle the proposed defendant is neither necessary nor proper party. Hence, I answered point no.1 and 2 in negative.

11. **POINT NO.3:** For the foregoing reasons on above points, I proceed to pass the following :

**:ORDER:**

I.A.No.V filed by the proposed defendant No.2

U/o. I Rule-10 of C.P.C. is hereby

**dismissed.**

No order as to cost.

Further cross of PW.1 call on 21.09.2024.

(Dictated to the stenographer, script revised, corrected and then signed by me and pronounced in Open Court the 21<sup>st</sup> day of August 2024)

**(CHETHAN R)**

Civil Judge & JMFC., Jagalur

(Order passed and pronounced in the open court vide separate order)

**ORDER**

I.A.No.V filed by the proposed defendant No.2 U/o. I Rule-10 of C.P.C. is hereby **dismissed.**

No order as to cost.

Further cross of PW.1 call on 21.09.2024.

Civil Judge & JMFC.,  
Jagaluru.