

Case called out.
Both parties absent.
No representation from either side.

**ORDERS PASSED ON THE IA NO.2 FILED BY THE
APPLICANT UNDER ORDER 1 RULE 10(2) R/w SEC. 151
OF CPC**

The said has been filed by the applicant and prays to include her as a proper and necessary party to this suit and permit her to come on record and contest this case in order to adjudicate the above matter more effectually and completely and settle all the questions involved in it and add the applicant as defendant no. 5.

2. In support of the IA, applicant filed affidavit and stated that this suit has been filed by the plaintiffs with respect to the plaint schedule properties seeking for partition. It is stated that plaint schedule properties are the self-acquired properties of the deceased defendant no. 1. The said properties are the tenanted lands and on his filing application in Form No. 7, the Land Tribunal of Puttur had granted occupancy patta to the defendant no. 1 by Order dated 03.09.1980. It is stated that Form No.10 was also

issued in favour of the defendant no.1 on 16.05.1981. On the strength of the said acquisition of title, leasehold rights are converted as freehold rights making defendant No.1 as absolute owner of the properties. It is stated that no one including the plaintiffs of this suit has got any sort of right, title and interest over the plaint schedule properties till the death of defendant no.1. It is stated that defendant no.1 was dead during the pendency of this suit and the record of rights were standing in the name of defendant no.1.

3. It is stated that defendant no. 1 had also sold some of the lands without any objections from the plaintiffs. Further plaintiffs in this case had not at all included those properties or the purchasers of the said properties as parties to this suit. It is stated that the plaintiffs admit that the occupancy patta granted to their father is not a family grant but personal grant and they have no right whatsoever in the said properties. It is stated that the plaintiffs ought to have challenged the sale deeds made by their father if at all their claim is denied. There is absolutely no explanation by the plaintiffs for not including those properties which are sold by

their father, as such the present suit is bad for seeking for partial partition.

4. It is stated that applicant had purchased RS No. 115/ 3 measuring to an extent of 0.56 acres of Kodimpady Village, Puttur Taluk from Defendant no.1 through a registered sale deed dated 05.05.2016 for a sale consideration amount of Rs.1,40,000/-. It is stated that by virtue of the registered sale deed applicant became the absolute owner of the purchased property and she is in actual possession and enjoyment over the said property; and the said property is included in the present suit as Item No. 4 in the plaint 'A' schedule.

5. It is stated that she has filed an application for impleadment in FDP No.7/2014 before this court wherein she was impleaded as a party. The said FDP No.7/2014 was dismissed in view of the order passed in case Mis case No.1/ 2015, as such in order to prove the fact of sale it is necessary to implead the applicant as party to this suit. It is stated that if the IA is allowed no hardship or injury is caused to the plaintiffs. But on the contrary if the IA is rejected it is

going to cause irreparable loss and injury to the applicant. Hence prays to allow the IA.

6. On the contrary, counsel for the plaintiffs filed objections to the IA and stated that the application filed by the applicant is highly frivolous, vexatious and unsustainable either under law or on facts of the case. It is stated that it is not correct to state that the petition schedule properties are the self-acquired properties of defendant no.1. It is stated that the plaint schedule properties are the joint family partible properties, as such plaintiffs have got equal right in the said properties. It is stated that defendant no.1 having only undivided right had no right to sell the property and it is not his absolute property.

7. It is stated that, applicant has no right to seek herself to be impleaded to this case, since according to her, she has purchased 56 cents in Survey No.115/3 under Registered sale deed date 05/05/2016 executed by the defendant no.1 which is subsequent to the suit, as such, it amounts to lis pendency and hit by Section 52 of the Transfer of Property Act, hence, by virtue of the above said deed, applicant will

not acquire any right in the property. It is stated that both defendant no.1 and the applicant knew about the suit and knowing fully well about the pendency of suit applicant got executed this deed from the defendant no.1 without paying any consideration. It is stated that applicant is not even a stranger since she is the wife of the defendant no.2. It is stated that applicant is neither a necessary nor a proper party to this property. Hence prays to dismiss the IA.

8. Perused the IA, objections and rest of the material particulars available on record. Below mentioned points arisen for my consideration.

P O I N T S

1) Whether the Applicant made out grounds to consider the IA filed under Order 1 rule 10(2) r/w Section 151 of CPC and grant the relief as prayed for ?

2) What order?

9. Heard counsel for the plaintiff and counsel for the applicant. Perused the IA, objections and rest of the material

particulars available on record. My findings to the above points is as hereunder.,

Point No.1 : In the Affirmative.

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

R E A S O N S

10. Point No.1: This is the suit filed by the plaintiffs against the defendants and sought for the relief of partition & separate possession with respect of the suit schedule properties. When the matter posted for filing of the additional written statement, at this stage applicant came up with this application and sought for the relief to add her as a necessary party to this suit.

11. Counsel for the applicant argued that on 05/05/2016 deceased defendant No.1 alienated item No.4 of plaint 'A' schedule property in favour of the applicant by executing registered sale deed. It is argued that item No.4 of plaint 'A' schedule property is the self acquired property belonged to the deceased defendant No.1 and being absolute owner, for a sale consideration amount of

Rs.1,40,000/- deceased defendant No.1 sold the said property to the applicant. It is argued that based on the sale deed RTC pertaining to the purchased property stands in the name of the applicant. It is argued that since the suit properties are the granted properties which are the absolute self acquired properties belonged to the deceased defendant No.1 plaintiffs are not having any right over the properties belonged to the deceased defendant No.1. It is argued that since the plaintiffs claiming right over the suit properties including the property purchased by the applicant, as such applicant is a necessary party to this suit and in her absence this court cannot adjudicate the rights of the parties with respect to the alienated property. Hence prays to allow the IA.

12. Per contra, Counsel for the plaintiffs argued that, applicant has no right to seek herself to be impleaded to this case, since according to her, she has purchased 56 cents in Survey No.115/3 under Registered sale deed date 5/5/2016 executed by the defendant no. 1, which is subsequent to the suit, as such, it amounts to lis pendency and hit by Section

52 of the Transfer of Property Act, hence, by virtue of the above-said deed, she will not acquire any right in the property. It is stated that both defendant no. 1 and the applicant knew about the suit and knowing fully well about the pendency of suit only applicant got executed this deed from the defendant no. 1 without paying any consideration. It is stated that applicant is not even a stranger since she is the wife of the defendant no. 2. It is stated that applicant is neither a necessary nor a proper party to this property. Hence prays to dismiss the IA.

13. Heard the counsel for plaintiffs and the applicant. Perused the materials available on record. This is the suit filed by the plaintiffs against the defendants and sought for the relief of partition & separate possession with respect of the suit properties. It is the specific case of the applicant that she had purchased Item No. 4 of the plaint issued property for a sale consideration amount of Rs. 1,40,000/- from the deceased defendant no. 1 and based on the said registered sale deed, the revenue records pertaining to the purchased property stands in her name. It is the specific

case of the applicant that the property which purchased by her from the deceased defendant no. 1 was his self-acquired property in which plaintiffs are not having any sort of right or share, as such after the purchase she had become the absolute owner of the said property. It is contended that since the purchased property is added as one of the property in the present suit, if the suit is going to be decreed and property is got divided in between the parties to the suit, her right over the said property will be affected, as such to protect her right over the purchased property she has to be added as a necessary party to this suit.

14. It is the case of the applicant that she is the proper and necessary party and her presence is required for the just adjudication of the present suit. On perusal of the Xerox copy of the registered sale deed which is produced by the applicant, prima facie at this point it clarifies that she has purchased Item No. 4 of the Plaint 'A' schedule property from the deceased defendant no. 1 on 05.05.2016 during the pendency of the suit, for a sale consideration amount of Rs. 1,40,000/-. The registration of the said deed in favour of the

applicant by the deceased defendant No.1 has not been disputed by the plaintiffs, there contention is that applicant has no right to seek herself to be impleaded to this case, since according to her, she has purchased 56 cents in Survey No. 115/3 under Registered sale deed date 5/5/2016 executed by the defendant no. 1, which is subsequent to the suit, as such, it amounts to lis pendency and hit by Section 52 of the Transfer of Property Act, hence, by virtue of the above-said deed, she will not acquire any right in the property.

15. Whether the Item No. 4 of the Plaint 'A' schedule property was the self acquired property or the joint family property of the deceased defendant no. 1 or not?, or Whether the applicant is having any right with respect of the purchased property or not?., those aspects have to be considered only on merits of this case. At this stage admittedly some interest has been created with respect to Item No. 4 of the Plaint 'A' schedule property in favour of the applicant by virtue of the sale deed dated 05/05/2016, as such if the suit is going to be decree by making division of

the Item No. 4 of the Plaint 'A' schedule property, this Court opines that it would leads to multiplicity of the proceedings between the parties & in order to avoid multiplicity of the proceedings between the parties as well for proper adjudication of the real controversy between the parties with respect to Item No. 4 of the Plaint 'A' schedule property is concerned this Court opines that presence of applicant is necessary as such it is essential to add the applicant as additional defendant to this suit. Applicant has made out grounds to add her as party to this suit and if this IA allowed no harm or injustice is going to be caused to the plaintiffs. Hence, I proceed to answer point No.1 in the affirmative.

16. Point No.2: For the reasons as discussed above in point No.1, I proceed to pass the following.,

ORDER

IA No.2 filed by the applicant Under Order 1 Rule 10(2) R/w Sec. 151 of CPC is allowed.

Applicant is added as Defendant No.5 to this suit.

Plaintiffs are directed to

add the applicant as the the
defendant No.5 to this suit.

For amendment

Call on:24-11-2025.

Addl. Senior Civil Judge
& J.M.F.C, Puttur, D.K.