

07.01.2025

ORDER ON I.A.No.8

Plaintiff has filed this application under Order I Rule 10(2) and Sec.151 of CPC requesting this court to permit him to implead the persons as mentioned in the IA as proposed defendants No.5 to 7 and to carryout consequential amendments in the plaint.

2. In the affidavit annexed to the application, plaintiff has averred that, defendant No.1 has mentioned that he has sold the property to defendant No.7 during the pendency of the suit. Therefore, defendant No.7 is necessary and proper party to this suit. The other two defendant i.e., 5 and 6 are having adjoining property, hence they are necessary and proper parties. Now the injunction has been granted against defendant no.1 by the appellate court, to have a complete adjudication the presence of the proposed parties are necessary to implead. Hence, prays to allow the application.

3. Defendant no.5 and 6 have filed objection by contending that, the suit being

for bare injunction against the defendant no.1 to 4, impleading the proposed defendants is not at all necessary in order to adjudicate this suit. The defendants are neighbors of the suit property and suit being for perpetual injunction against defendants, the presence of the proposed defendants does not serve any purpose, there is no cause of action at all alleged by plaintiff in the plaint against the proposed defendants and further it is pertinent to note that the plaintiff in Paragraph No.3(d) clearly states that "in western side of the suit property one Mrs.Marceline Menezes is having immovable property and there is no dispute between the plaintiff and above said Mrs.Marceline Menezes". The above said Mrs.Marceline Menezes who is proposed defendant no.6 is a senior citizen and also a paralysis patient and who is at present not even in a position to walk without anyone's help. It is submitted that when it is very clearly stated in plaint by the plaintiff that there is no dispute between plaintiff and proposed defendant no.6 and without there being proper cause of action against the proposed defendants, they have been sought

to be made as parties which is nothing but abuse of process of law. The plaintiff cannot go on adding unconnected persons to fulfill his unlawful claims claimed in the suit. Only to drag the proceedings the present application has been filed. Hence, prayed to dismiss the application with costs.

4. Heard and perused.

5. Now the points that arise for consideration are as follows;

1. Whether the plaintiff has made out grounds to allow the application?

2. What order?

6. Answer to the above points are as hereunder:

Point No.1: In the **Affirmative.**

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

REASONS

7. **Point No.1:-** The present suit is filed for the relief of permanent injunction.

8. Now the plaintiff is seeking to implead the persons as mentioned in the IA as proposed defendants No.5 to 7 by

contending that, this is a bare injunction suit. Hence, impleading the proposed defendants is not at all necessary in order to adjudicate this suit. The defendants are neighbors of the suit property and suit being for perpetual injunction against defendants, the presence of the proposed defendants does not serve any purpose, there is no cause of action against the proposed defendants. Without there being proper cause of action against the proposed defendants, they have been sought to be made as parties which is nothing but abuse of process of law. But defendants No.5 and 6 are opposing the same.

9. On perusal of the records it is found that, the plaintiff has not pressed the names and address of the proposed defendant No.5 and 6 on IA No.8 by filing memo on 07.12.2024. Moreover, the proposed defendant No.7 has not filed any objection to this application. Hence, in order to adjudicate the dispute involved in this suit effectively, this court implead the person mentioned at serial No.3 of the application i.e., Mr.Arun Subbayya Shetty as defendant No.5. No prejudice will be caused to the

defendants, if this application is allowed. Admittedly, there is an inordinate delay caused by the plaintiff in filing this application at the belated stage. But the reasons ventilated by the plaintiff in the affidavit annexed to the application will come under the sphere of reasonable cause. Hence, there is no impediment in considering this application. To avoid multiplicity of proceedings and to meet ends of justice this court answered point No.1 in the **Affirmative.**

10. **Point No.2:-** In view of the above discussion, this court proceed to pass the following:

ORDER

IA No.8 filed by the plaintiff under Order 1 Rule 10(2) and Sec.151 of CPC is hereby allowed.

The plaintiff is permitted to implead the person mentioned at serial No.3 in the IA No.8 as defendant No.5.

For carry out the amendment and to file amended plaint.

Call on : 21.01.2025

Sd/-
Civil Judge & JMFC,
Moodbidri