IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL JUDGE & J.M.F.C., HUBBALLI

Present:

SMT. SARVAMANGALA K.M.,
B.A. LL.B.,
I Additional Senior Civil Judge and JMFC.,
Hubballi.

O.S. No.323/2024

Dated this the 16th day of September, 2025

Plaintiff/s	:	*Babajan S/o Pattesab Kanchagar and others.*
		.Vs.
Defendant/s	:	*The Hubballi-Dharwad Municipal Corporation Represented by its Commissioner and another.*

PARTIES TO I.A. No.IV

Applicant	:	*Muttarahmad S/o Pattesab Kanchagar.*
		.Vs.
Opponents	:	*The Hubballi-Dharwad Municipal Corporation Represented by its Commissioner and another.*

i.	*Provision under which application is filed*	:	*Under Order I Rule 10 of CPC*

ii.	Relief sought for	:	To implead the proposed defendants No.3 and 4.
iii.	The date on which application is filed	:	22.01.2025
iv.	Number of the application	:	IV
v.	The date on which objections are filed by different opponents	:	04.04.2025 (by proposed D.3 & 4)
vi.	The date on which orders were passed on the said application	:	16.09.2025

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ORDERS ON I.A. No.IV

The applicants/plaintiffs have filed this I.A. under Order 1 Rule 10 R/w.Section 151 of C.P.C. seeking to implead the proposed defendants No.3 and 4.

2. *The proposed defendant No.3 and 4 filed objections to this I.A.*

3. *Heard arguments.*

4. *The point for consideration are as follows:*

   1. *whether the proposed defendants No.3 and 4 are necessary parties to the suit ?*
   2. *What order ?*

5. *My findings on the above points are as follows:*

Point No.1 : In the Negative.
Point No.2 : As per final order, for the following;

REASONS

6. ***Point No.1:*** *This is the suit filed by the plaintiffs for the relief of declaration against the defendants.*

7. *The brief facts of the affidavit annexed to application is that, the plaintiffs have secured loan from Bank of India, Gokul Road Branch, Hubballi by depositing the title deeds of suit property and availed housing loan. Being so the proposed defendant No.3 and 4 may likely to sell away the suit property to some 3rd party detrimental to the interest of the plaintiffs. The lis is pending before this Court. Therefore the proposed defendant No.3 and 4 are necessary and proper parties to the suit as the case cannot be adjudicated without the parties. The judgment and decree to be pronounced by this Court will be adversely affected to the 3rd party. Therefore, 3rd parties i.e., proposed defendant No.3 and 4 are also necessary parties for the adjudication of the suit. Hence, this application and prayed to allow the application.*

8. The objections of the proposed defendant No.3 and 4 is that, the plaintiff has mortgaged the suit property in favour of the proposed defendant No.3 and availed the loan. Plaintiff has committed default in the repayment of the loan. Therefore, the proposed defendant No.3 and 4 have initiated legal action for the recovery of the loan under the provisions of SARFASI Act. The defendant No.4 has taken possession of the suit property under the provisions of Sec.13(4) of SARFASI Act and also has issued necessary newspaper publication in Kannada and English newspapers. It is further submitted that the plaintiff is the full and absolute owner of suit property and he has got good and marketable title of the same. The defendant No.1 has not produced any documents to show that the plaintiff has encroached upon HDMC property. The plaintiff is in possession of suit property since many year. Now all of a sudden he has filed a suit for declaration and injunction against the defendant No.1. The plaintiff has filed this suit only with an intention to defeat the claim of proposed defendants on the suit properties and keep the property in litigation. The plaintiff wants see that by the proposed defendant No.3 should not auction the suit property and he wants to keep the suit property in litigation. Therefore, the plaintiff has filed application to implead defendant No.3 and 4 in the suit and create *legal impediment in bringing the suit property in auction. If defendant No.3 and 4 are made as party in the above suit it will be difficult for the proposed defendants to bring the suit property for sale. It is further submitted that the alleged dispute between the plaintiff and defendant No.1 is false and the plaintiff wants to create problem for the defendants No.3 and 4. The plaintiff is bound to repay the loan amount to the proposed defendant No.3. The defendant No.1 is acting at the instance of plaintiff. The defendant No.1 cannot refuse to issued building permission in favour of the plaintiff without valid reasons. Hence, prayed to dismiss the I.A.*

9. *On careful perusal of the materials available on record it is noticed to the Court that this is the suit filed by the plaintiff against the defendants seeking the relief of declaration declaring that the plaintiffs are the owners and holders of the suit property by virtue of sale deed dated:23.01.2019 and also consequential relief of permanent injunction. The defendants are the Hubballi-Dharwad Municipal Corporation and Assistant Commissioner Hubballi Dharwad Municipal Corporation. When the matter is set down for plaintiff evidence the plaintiff came up with the present I.A. seeking impleading of the proposed person as defendant No.3 and 4. Admittedly, the proposed parties are the Manager, Bank of India and the authorized officer, Bank*

of India, Gokul Road Branch, Hubballi. In this regard it is well settled principles of law that under Order 1 Rule 10 of CPC a necessary party is one without whom no effective decree can be passed, a proper party is one whose presence is not essential, but whose participation helps in complete adjudication. Admittedly, in the present suit on hand the plaintiff sought the relief against the defendant No.1 and 2 and plaintiff have obtained loan from the above said Banks, if the declaration sought directly affects the loan transaction or Banks rights in such case the Bank is necessary party, because the decree would affects its legal rights. If the declaration is only about title/ ownership between plaintiff and some other parties without questioning the Bank loan or mortgage in such case the Bank is not a necessary party, because no relief is sought against it. Moreover, the Bank becomes a proper and some times necessary party since allegations and reliefs affect its position. Therefore, the present Bank authority is not a necessary party. Hence, it is not required to be impleaded. Therefore, this Court is of the opinion that the application filed by the plaintiff is liable to be dismissed and I answer ***point No.1 in the Negative.***

*10. **<u>Point No.2</u>**:- In view of the aforesaid reasons, I proceed to pass the following;*

ORDER

The I.A. No.IV filed by the applicants/ plaintiffs under Order I Rule 10 R/w Section 151 of CPC is hereby dismissed.

*(Dictated to the Stenographer directly on computer, script corrected and then pronounced by me in the Open Court on this the **16th day of September, 2025**)*

sd/-

(Smt. Sarvamangala K.M.)
I Addl. Senior Civil Judge and JMFC.,
Hubballi.