

**IN THE COURT OF THE CIVIL JUDGE AND J.M.F.C.
NAVALGUND**

FDP.No.6/2021

Dated this the 05th day of December, 2023

Present : Sri. Naveen F. Dsouza

B.B.A., L.L.B., (Spl).,

Civil Judge and JMFC., Navalgund.

Petitioners :1. Mahesh S/o. Mallappa Pujar,
Age: 39 years, Occ: Coolie,
R/o. Annigeri, Tq: Annigeri,
Dist: Dharwad and another.

(By Sri. SBG/SMH/HBM. ., Advocates)

Versus

Respondents :1. Mallappa S/o. Shivappa Pujar,
Age: 58 years, Occ: BSNL Employee,
R/o.Naregal, Tq: Gajendragad,
Dist: Gadag and others.

(R-1-3 exparte, R-4-9 by Sri. HDG/PKA, Advs
R(3a)-R3(d) by Sri.RMR.,Adv.)

PARTIES TO I.A.NO.4

Applicants : 1. Veeresh S/o. Mallappa Pujar & another

Versus

Opponents : 1. Mallappa S/o. Shivappa Pujar & others.

**ORDERS ON I.A. NO.4 FILED BY THE PETITIONER
NO.2 UNDER ORDER 1 RULE 10(2) OF CPC.**

The application is coming for disposal before this court under the provisions of Order I rule 10(2) R/w.151 of CPC.

2. The applicant is the petitioner no.2 and has sought to implead the proposed respondent no.10 in the petition on the ground that he is a necessary party.

SYNOPSIS:

3. The petition is filed seeking to effectuate the decree passed in O.S.No.151/2011 and for allocation and allotment of shares

wherein the petitioners are entitled for 1/3rd share in the petition schedule properties.

4. The applicant is before the court to implead the proposed respondent as respondent no.10 citing that the legal heirs of respondent no.3 have alienated the petition property during the pendency of the proceedings.

5. To the contrast the proposed respondent has submitted his objection in written for submitting that the judgment and decree of the court is not binding upon the proposed respondent and that they are the bonafide purchasers for valuable consideration and have prayed for dismissal of the application.

6. Upon having heard the rival submissions and on perusal of the materials placed on record, this Court has narrowed down the dispute to definite points and has answered them accordingly;

Sl. No.	Points	Answers
1	Do the presence of the proposed respondent no.10 necessitates the effective and complete adjudication of all the disputes between the parties?	In the Affirmative,
2	What order?	As per final order, for the following;

REASONS

7. **Point No.1:-** For the sake of brevity and better understanding the key points are evaluated together, as the essential facts are already summarized in the synopsis.

8. The brief facts germane for the consideration of this application are, that the petitioners have pleaded themselves to be brothers and begotten children of respondent no.1 and 2.

9. That the respondent no.1 had conveyed the undivided petition schedule joint family property to respondent no.3. But the same came to be set aside in O.S.No.151/2011 and the petitioners were declared to be entitled for 1/3rd share each in the petition schedule property and they were disoriented from the binding obligation of the conveyance.

10. That the O.S.No.151/2011 has come to be disposed off on 31.10.2013 and decreed on 21.12.2013. That in the due course the respondent no.3 has conveyed the property to respondent no.4 to 9 in various parts.

11. Furthermore that after the demise of the respondent no.3 his legal representatives i.e., respondent no.3(a) to 3(d) have executed GPA in favour of respondent no.3(a) and by the strength of the GPA the respondent no.3 has conveyed the property to proposed respondent no.10.

12. It is submitted that the subsequent alienations are deliberate and with malafides so as to defeat the decree and defenestrates the petitioners from claiming right in petition schedule properties.

13. The learned counsel for the petitioner has asserted that the respondents being educated are in knowledge of the proceedings and have purchased the property and he has also captured the attention of this Court to the contents of the sale deed.

14. It is the assertion of the learned counsel for the petitioner is that the sale deed is executed referring to the petition property as agricultural property and the same has been transformed by the proposed respondent no.10 for construction of structures in derogation of the Section 109 of KLR Act.

15. To the contrast the counsel for the proposed respondent has submitted that the proposed respondent is not in knowledge of the judgment and decree and the application is filed by the petitioners at the instigation of their father so as to defraud the bonafide purchasers.

16. It is his further assertion that the proposed respondent has purchased the property in due process of law and the judgment and decree would not be binding upon him. Hence, he has prayed for the dismissal of the application.

17. It is the apprehension of the petitioner that the presence of the proposed respondent is very much necessary for the adjudication of the petition and that if the proposed respondent is not brought on record there could not be any final decree.

18. On perusal of the materials placed on record and also the Pleadings of the parties and upon hearing the rival submissions, the subsequent transactions have occurred post decree. The present petition is for drawing up of final decree.

19. The fact of transfer is not in dispute. Admittedly the petitioners are entitled for their respective shares and as the proposed respondent is holding the entire petition property it would be imperative that he be tried in the present petition.

20. The apprehension and assertion that the proposed respondent has purchased property for valuable consideration and is the victim of the fraudulent and colluded acts of petitioner and respondent no.1 and 2, has to be decided by undergoing enquiry.

21. Furthermore the assertion that the proposed respondent has violated the provisions of land revenue act would not arise for determination in this petition. However, they can be made subject of enquiry.

22. This being the facts of the case in a nutshell, the applicant has the obligation to satisfy the ingredient that the implication of proposed respondent would be necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit.

23. The object of the rule is to bring on record all the persons who are parties to the dispute relating to the subject matter so that the dispute may be determined in their presence at the same time without any protraction, inconvenience and to avoid multiplicity of proceedings.

24. Furthermore the provision under which the applicant is seeking the relief, confers wide discretion on the court to meet with every case of defect of parties and is not affected by the inaction of the petitioner to bring the necessary parties on record.

25. The purpose of the provision is to bring before the court, at the same time, all the persons interested in the dispute so that the dispute may be finally determined at the same time in the presence of all the parties without the delay, inconvenience and expense of several actions and trials and inconclusive adjudications.

26. Addition of parties is, however, a judicial discretion which is required to be exercised judiciously. The petitioner is a dominus litis. He is the best judge of his interest. It is, therefore, for him to choose his opponent from whom he claims relief and, normally, the court should not compel him to fight against a person whom he does not want to fight and from whom he claims no relief; and (ii) if the court is satisfied that the presence of a particular person is necessary to effectively and completely adjudicate all the disputes between the parties, irrespective of the wishes of the plaintiff, the

court may exercise the power and join a person as party to the suit.

27. Unequivocally the power may be exercised by the court at any stage of the proceedings either upon an application of the parties or even suo moto and on such terms and conditions as may appear to the court to be just. Though the court may have power to strike out the name of a party improperly joined or add a party either on application or without application of either party, but the condition precedent is that the court must be judiciously cautious to ascertain whether the presence of the proposed party necessitates the adjudication of the dispute.

28. Upon giving a brief consideration to the above propositions this court opines that the presence of proposed respondent no.10 is very much necessary for the adjudication of the petition. The rival claims can be made subject of trial.

29. On the contrary, the litigation dates back to the year 2011 and similar application has been adjudicated by this Court in O.S.No.193/2014. Thus the court being satisfied with the purpose of implication of proposed respondent it is opine that he is a necessary party to the said proceedings and accordingly the point no.1 is answered in the **Affirmative**.

30. **Point no.2:** For the above discussions this court proceeds to pass the following;

ORDER

*The I.A.No.4 filed by the petitioner no.2
is hereby allowed.*

*The proposed respondent is impleaded
as respondent no.10 in the present petition.*

Petitioners are directed to make necessary amendments and furnish amended petition.

The amendment shall be carried out within 15 days.

(Dictated to the stenographer, transcribed and typed by her, the transcript revised, corrected and then pronounced by me in the Open Court on this **05.12.2024**)

(Naveen F. Dsouza)
Civil Judge and J.M.F.C.,
Navalgund.
