

Order on IA No.11

When the case is posted for cross examination of PW.2, this application is filed by the proposed defendant No.2 U/o 1 Rule 10(2) of CPC on 05.02.2024 to implead as defendant No. 2 in this suit.

2. In the affidavit annexed to the application it is stated that, the plaintiff has filed the suit against the defendant for seeking the relief of declaration and permanent injunction and defendant No.1 has filed counter claim. Out of 26 guntas of land in Sy.No.122/10 of kesavatturu village, 13 guntas of land towards northern side has fallen to defendant No.1 and 13 guntas of land towards southern side has fallen to proposed defendant. But, the plaintiff has not brought the proposed defendant as necessary party in the present suit. Hence, prayed to allow the application.

3. On the other hand, the plaintiff has filed the objection contending that, application is not maintainable either in law or on facts and it is illegal for filing the application after laps of 9 years and the proposed defendant No.2 has not assigned valid reasons in the affidavit as to why proposed defendant No.2 is necessary party. Hence, the application has been filed in order to waste the Court time. Hence, dismiss the application.

4. Heard the arguments of both side.

5. Points for my consideration.

1. Whether application deserves to be allowed?

2. What order?

6. Answer to the above points are as follows;

Point No.1 : In the affirmative

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

REASONS

7. **Point No.1.** I have already narrated the facts and circumstances of the affidavit annexed to I.A.No.11 and objections filed by the plaintiff.

8. By perusal of records, the plaintiff has filed this suit against the defendants for relief of declaration and permanent injunction with respect to the suit schedule property. After entered appearance, the defendant No.1 has filed written statement contending that, Sy.No.122/10 totally consists of 26 guntas of land. Out of 26 guntas of land, 13 guntas of land has fallen to defendant No.1 and remaining 13 guntas of land has fallen to Kalappa S/o. Basappa who is the proposed defendant and further taken contention that, the suit of the plaintiff is bad for non joinder of necessary parties. After contention taken in the written statement of defendant No.1, the plaintiff has not made any effort to bring the proposed defendant No.2 in the present suit. At this stage, the Court cannot come to

conclusion that, the proposed defendant is absolute owner or not . In order to determine the title of both parties, proposed defendant is necessary party. Hence, point No.1 is answered in the affirmative.

9. Point No.2: As per the following:

Order

I.A.No.11 U/o 1 Rule 10(2) of CPC, filed by the applicant/ proposed defendant is hereby allowed on cost of Rs.1000/-.

Posted for carry out the amendment and amended plaint by 29.07.2024.

2nd Addl. Civil Judge & JMFC.,
Arkalgud.