

IN THE COURT OF SENIOR CIVIL JUDGE AND J.M.F.C., AT ARSIKERE

: PRESENT :

**Smt. Saraswati.V.Kosandar, B.Com., L.L.M.
Senior Civil Judge & JMFC,
Arasikere**

Dated on this the 6th day of June, 2012

FDP No. 07 / 2007

Applicants/Appellants :-1. Sri. Kashi.V Manjunath and Others
(By Sri N.S.S. Advocate, Arasikere)

- V/s -

Respondent:- 1. Smt. K.V. Ngarathnamma & others
(By : Sri.G.A.K,Sri, P.N and Sri
M.M.N Advocates, Arasikere)

Partiese to I.A No.5:

Applicant Nagavishnesh since Minor Represented .,
by Natural guardian Mother.
(By Smt. S.V.S. Advocate,)

- V/s -

Respondent:- 1. K.V. Manjunath and others
(By : Sri.N.S.S Advocate Arasikere)

ORDER

The minor Applicant has filed this I.A.No.5 through his natural guardian mother, under order 1 Rule 10 R/w Sec.,151 of C.P.C. seeking an order to implead him as necessary party in this petition

2) In support of I.A.No.1, the next friend of minor Applicant Smt. Nagajoythi has sworn to an affidavit stating that she is 3rd party in this proceedings. The present petitioners have filed this petition to obtain the final decree as per preliminary decree passed in O.S. No. 25/1994 against the respondents. The respondent No.1, i.e., the grandmother of minor applicant had executed registered Gift Deed dated 17.12.2005 out of her own volition, love and affection and the applicant is the permanent resident of said petition schedule property. This applicant has filed suit for declaration and injunction against the petitioners and the respondent No.2 to 6 herein in O.S.No.100/2011 on the file of the Civil Judge and JMFC, Arasikere and the same is pending. Now applicant apprehend the collusion on the part of the petitioners and respondent No.2 to 6 herein to defraud the applicant. Therefore it

is necessary in the interest of justice and equity that, the applicant may be impleaded in this petition, as necessary and proper party to agitate applicant's right under the Gift Deed executed by the 1st respondent dated 17.12.2005 and also claim equity that, the said property, may be allotted to the 1st respondent, who bequeathed the same to the minor applicant, vide her registered Gift Deed dated 17.12.2005, in favour of the applicant. Hence this application.

4) After the receipt of the notice of this I.A. the petitioners have filed objections contending that that application is not maintainable. It is contended that after passing preliminary decree, the father of the instant applicant Nagavignesh and his other brothers and sisters have executed registered gift deed in favour of the petitioner K.V. Manjunath. The petitioner has repaid the entire loan raised by respondent No.2. Respondent No.1 had no properties to her name but still gift deed has been got created by the applicant. Already the applicant has filed the suit and his rights have to be determined in those suits. Therefore it is not possible for the applicant to seek an order to come on record of this case. Applicant is not a necessary or proper party to this petition. Hence among these and other grounds the petitioners have prayed to reject this application.

5) Heard arguments from both sides.

7) I have perused the available material on record.

8) Now the point that arise for my consideration is as follows:-

- I. Whether the Applicant has made out grounds to allow I.A.No.V. ?

9) My finding to the above point is in the '**Affirmative**' for the following:-

REASONS

Point No.1 :-

10) The instant petition is filed U/Sec. 54 of CPC seeking an order to declare that the petitioner has become owner of petition schedule properties by virtue of the registered gift deed dtd: 21/12/1999 or to conduct enquiry in to the matter if the respondents object for it.

It is the case of petitioner that during the pendency of suit in O.S.25/1994 there was settlement between all the members of family wherein the petitioner agreed to repay the loan Rs.45 lakhs and in turn the Respondent No.1 with consent of other respondents executed gift deed Dtd.21-12-1999 in favour the petitioner. However some of the members inspite of settlement continued the suit, which has been later decreed and a preliminary decree has been filed. The final decree proceedings initiated

by some of the respondents were withdrawn by them. Even though petitioner has repaid the loan raised by respondent No.2, but 2nd respondent has filed suit in O.S. No.5/2006 seeking permanent injunction . However this petitioner has become owner of all the petition schedule properties. Therefore petitioner is constrained to file this petition seeking the relief of declaration and if any of the respondents object for said declaration, to conduct enquiry as per preliminary decree and to decide the share of the petitioner as per settlement between the members of the family. In this case the respondent No.1 who is the grand mother and respondent No.2 who is the father of instant applicant have filed objections wherein they have denied the case of the petitioners.

11. On perusal of the order sheet it can be seen that there was an enquiry regarding claim of the petitioner as well as Respondent No.1 and 2 and when the matter was pending for arguments the instant applicant has come up with this application seeking an order to implead him as necessary party to this petition.

12. The learned counsel for applicant has vehemently argued that the instant applicant is a minor and he is in possession and enjoyment of one of the properties involved in this petition. The applicant has acquired the same under a registered gift deed executed by respondent No.1 who is

none other than the grand mother of the applicant. Therefore his presence in this petition is very much necessary otherwise he will be put to much loss. Per contra the learned counsel for the petitioner and counsel appearing for respondents No.3 & 4 have objected this application. It is argued that already the proceedings in this petition have come to an end and there is no scope to permit the petitioner to come on record and agitate his right before this court. Hence he prayed to reject this application.

13. Order 1 rule 10(2) of CPC contemplates that the court may at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the court be just, order that the name of any party improperly joined may be struck out and that the name of any person who ought to have been joined as plaintiff or defendant whose presence before the court may be necessary in order to enable the court effectively and completely to adjudicate upon and settle all the questions involved in the suit be added. It is settled law that the final decree proceedings are the continuation of suit. In this case no doubt enquiry has been completed by way of recording the evidence of the parties. However no final decree is passed till today. Admittedly petitioner is seeking declaration of his right over the petition properties on the basis of gift deed said to have been executed by all the family members. At this stage it is not in dispute that the instant applicant is the son of 2nd respondent herein. It is also not in dispute that the instant applicant has filed suit in respect of one of the properties involved in this petition and same is pending .the applicant his caiming not only

possession in respect of one of the petition schedule property but his claiming owner ship over the said property on basis of gift deed said have been executed by respondent No.1 Under these circumstances before passing final decree it is necessary to determine the right of the instant applicant also. Therefore I am of the considered view that I.A.No.V, deserves to be allowed. For the foregoing reasons I answer the above point "in the Affirmative". In the result I proceed to pass the following :-

ORDER

*I.A.No.V, filed under order 1 rule 10 R/w Sec.
151 of CPC, is hereby allowed.*

There is no order as to cost.

*(Dictated to Stenographer on computer, corrected and then
pronounced by me in open Court on 6th June 2012)*

(SARASWATI.V.KOSANDAR)
Senior Civil Judge & JMFC,
Arasikere.

