

(I.A NO 2 FILED AT THE STAGE OF
P.EVIDENCE)

ORDER ON I.A.NO.2

I.A.No.2 filed by the plaintiff under Order I Rule 10 R/w section 151 of C.P.C. seeking to implead proposed defendants as defendant No.5 .

2. In the accompanying application filed stating that, the proposed defendant is close relative of the 2nd defendant and same villager too. After receiving summons in this matter, the defendants and the proposed defendant have colluded together and have fraudulently got created and concocted make believe document by way of sale deed dated 21-07-2022. At the active instigation of the defendants, the proposed defendant is also trying to interfere with our lawful joint possession and enjoyment over the suit properties since about a week back. The proposed defendant has also fraudulently got changed katha of one suit item. The proposed defendant is very

powerful person in the locality by having money, muscle and political power. As such the proposed defendant is proper and necessary parties to this suit. With a view to avoid multiplicity of proceedings, it is necessary to implead the proposed defendant in to this matter. Hence, they prayed to allow I.A.No.2.

3. After service of the Notice on I.A. No.2 to the proposed defendant No.5, inspite of service of summons, the proposed defendant does not appear before the court. Hence he placed absent.

4. Heard on both sides & perused the materials.

5. As per Order I Rule 10 of C.P.C., this Court is having power to add parties in the suit during the pendency of the suit at any stage. The law is settled on the point that the plaintiff is sole architect of his plaint. It is the plaintiff who has a right to choose his own adversary

against whom he seeks a relief. It is well settled that any decree or order passed by a Court would not affect a person who is not a party in the suit or the proceedings. It is not always necessary to implead a person in a suit. Only it is settled that impleadment is necessary to avoid multiplicity of the suit. There must be such facts and circumstances to show that unless the person is impleaded in the suit or a proceeding, there is likelihood of further litigation in the same matter.

6. The suit filed by the plaintiff against the defendants for partition and separate possession. During the pendency of the suit, the defendants executed the sale deed in favour of opponent/ proposed defendant No.5. In view of alienation of the suit property during the pendency of the suit, the plaintiff is entitled to the reliefs claimed in the suit as against the opponent also.

Therefore, the proposed defendant is a proper and necessary party to the suit.

7. In this circumstances It is worth to refer decision of the **Hon'ble Apex Court in the case of Kasturi -Vs- Iyyamperumal and Others reported in (2005) 6 SCC 733**, wherein their lordships have held that, two test are to be satisfied for determining the question who is a necessary party. Test are (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party. The plaintiffs have filed the present suit to against the defendants for partition and separate possession . It is undisputed that during the pendency of this suit the proposed defendant purchased the suit property. In present case rights of the parties not yet adjudicated. In view of purchase of the suit property, the proposed defendant is a necessary party to the suit and he has to

be heard before any order is made. If the proposed defendant is not added, the right of the plaintiff will be defeated. Thereby, applying the test laid down in the case of Kasturi (supra), the opponent is a necessary party to the present case. Accordingly, Court is of the opinion that, the proposed defendant No.5 is necessary party in order to adjudicate the controversy involved in the suit effectively and completely. Moreover, if the I.A. opponent impleaded as parties, no harm will be caused to other side, Therefore, court is of the opinion that the plaintiff has made out sufficient grounds to allow I.A.No.2. Hence court proceed to pass the following:-

:: ORDER ::

I.A.No.2 filed by the plaintiff under Order I Rule 10(2) R/w section 151 of C.P.C. is hereby allowed.

The opponent is made as defendant No.5 in the suit.

The plaintiff is hereby required to carry out the

amendment of the plaint and
furnish the amended plaint
forthwith.

No order as to costs.

Call on:

3rd Addl. Civil Judge and J.M.F.C,
Channarayapatna.