

(I.A NO IV FILED AT THE STAGE OF
PLAINTIFF EVIDENCE)

ORDER ON I.A.NO.4

I.A.No.4 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.2.

2. In the accompanying application filed affidavit stating that, the plaintiff has filed suit against the defendant for the relief of permanent and mandatory injunction in respect of the suit schedule property . The proposed defendant is having land adjacent to the suit property. Further stated that since about one month back, the proposed defendant has trying to interfear with the peacefull possession and enjoyment of the suit property of the plaintiff with the active instigation of the defendant. Hence, the proposed defendant is also proper and necessary parties in the suit. With a view to avoid multiplicity of proceedings, it is necessary to impleaded the proposed defendant in to this matter. If the application is allowed no prejudice will be caused to the defendant on the other hand the plaintiff will be put to greate loss and hardship. Hence, he prays to allow I.A.No.4.

3. After service of the Notice on I.A. No.4 to the

proposed defendant No.2, 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 permanent and mandatory injunction in respect of the suit schedule property. During the pendency of the suit, the defendant has trying to interfere with the peaceful and enjoyment of the suit schedule property. Hence, plaintiff

intends to impale the proposed defendant as defendant No.2.

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 permanent and mandatory injunction. 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.2 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.4. Hence court proceed to pass the following:-

:: ORDER ::

I.A.No.4 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.2 in the suit.

The plaintiff is hereby required to carry out the amendment of the plaint and furnish the amended plaint forthwith.

ORDER ON I.A.NO.6.

I.A.No.6 filed by the Learned Counsel for the Defendant under Order 6 Rule 17 R/W Sec.151 of Code of Civil Procedure for seeking permission of the Court to amend the written statement as sought in the application.

2. In support of his application filed affidavit stating that the plaintiff has filed appeal before the Assistant direct of Land Records, Hassan in R.A.No.131/2022-2023 . In the said Appeal, the defendant No.1 is respondent. Further stated that, Proposed amendment is very much necessary and It does not change the nature of the suit and it does not create new cause of action. Proposed amendment not barred by limitation. If the application is allowed no hardship will be caused to the plaintiff, on the other hand,

the defendant would be put to great loss and hardship. With these, prayed to allow the application.

2. The learned Counsel for the plaintiff submitted that, he has no objection to allow the application.

3. Heard both side. Peruse the application and materials on record.

4. On perusal of the proposed amendment, Court finds that, by way of amendment the plaintiff seeks counterclaim. Order VIII Rule 6(A) state as follows:-

Counter claim by the defendant:- 1. A defendant in a suit may, in addition to his right of pleading a sett-off under Rule 6, Set-up, by way of counter claim against the claim of the plaintiff, any right of claim in respect of the cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter claim is in the nature of a claim for damages or not. A Counterclaim can only be based on that cause of action which obtain and exist at the time of filing of

the written statement. Subsequent to the filing of the written statement any further fresh cause of action by the defendant against the plaintiff cannot be included in the counterclaim by way of an amendment. Cause of action for the counterclaim had arisen before filing of the written statement was maintainable. As per the Article 113 of limitation Act, 1963 the period of limitation to file the counter claim of three years from the date of the right to sue accrues . The defendant filed W/s on 01-03-2019. After lapse of 4 years the defendant seeks counter claim by way of amendment. On perusal of the proposed amendment, cause of action arise after filing of the written statement. Hence Court is of the Opinion that, the proposed amendment is not maintainable and it would introduces new set of facts and introduce new cause of action. Therefore, Court do not find any sufficient reason to allow the application. Hence application lacks bonafide and devoid of merits. Hence this application deserves to be rejected. Hence Court proceed to pass the following:

ORDER

IA No. 6 filed by the defendant under Order VI Rule 17 read with Section 151 of C.P.C., is hereby Rejected.

For amendment.

Call on 02-03-2023.

III. Addl.Civil Judge and JMFC.,
Channarayapatna.