

IN THE COURT OF THE CIVIL JUDGE & JMFC
BYADGI

PRESENT: SRI.RAJESH N HOSAMANE, B.Sc., ML.,
Civil Judge & JMFC, Byadgi

DATED THIS THE 16th DAY OF AUGUST, 2019

OS. No.83/2018

Plaintiff	Kavita W/o. Raju Guttal.
	- Vs. -
Defendants	1) Revaneppa Ningappa Vadayanapur and others.
	IA.No.1
Applicants (Proposed Deft No.4)	Puttappa Ningappa Vadayanapur, Age: 63 years, Occ: Agriculture, R/o: Hosashidenur, Tq: Byadgi, Dist: Haveri. V/s.
Opponent (Plaintiff)	Kavita W/o. Raju Guttal, Age: 24 years, Occ: Household Work, R/o: Gummanahalli, Tq: Byadgi, Dist: Haveri.

ORDERS ON I.A.No.1 FILED U/o. 1 RULE 10 R/W
SECTION 151 OF CPC

1. This is the application filed by the proposed defendant No.4 for to implead him as defendant No.4 in this suit.

2. The counsel for the plaintiff has filed his objections contending that, the application filed by the

proposed defendant No.4 is false, frivolous and it is not tenable under the law and on facts.

3. After hearing the arguments by plaintiff and defendant's counsel, the following points arise for my determination.

POINTS

1. Whether the application IA.No.1 filed U/o. 1 Rule 10 R/w Section 151 of CPC filed by the proposed defendant No.4 for impleading him as defendant No.4 in this suit is deserves to be allowed at this stage?

2. What order?

4. Heard the arguments.

5. On perusal of the pleadings and documents available on record, my findings to the above points are as under

Point No.1: In the Affirmative,

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

REASONS

6. Point No.1: It is submitted by the proposed defendant No.4 by name Puttappa Ningappa Vadeyanapur, R/o: Hosa-Shidenur of Byadgi Taluk that, the 1st defendant is his younger brother, plaintiff

and defendant No.2 and 3 are sons of his younger brother. The suit schedule 'A' properties involved in this case are also suit properties in OS.No.134/2016 and OS.No.106/2017. In OS.No.134/2016, he is the plaintiff. 1st defendant of this case is also one of the defendant in OS.No.134/2016. In OS.No.106/2017, 1st defendant of this case is plaintiff and OS.No.106/2017 is also filed for the relief of partition and separate possession. The plaintiff and defendants in collusion with each other, in order to get decree behind the back and without the knowledge of this defendants have filed this suit. If he not impleaded as defendant No.4 in this case, then there may be conflicting decisions. Hence, prayed to implead him as defendant No.4.

7. The plaintiff in his objections contended that, the proposed defendant No.4 is no-where concerned to this property. The proposed defendant No.4 has created false sale agreement and filed suit OS.No.134/2016 for specific performance of contract. The sale agreement produced by the proposed defendant No.4 is unregistered one. The OS.No.106/2017 is not at all related to this defendant.

The defendant No.1 has filed suit for permanent injunction against the proposed defendant No.4 in respect of suit schedule 'A2' property in OS.No.101/2017. The plaintiff has filed the suit for partition and separate possession in respect of suit schedule 'A' properties. The suit schedule properties are only concerned to plaintiff and defendants. The proposed defendant is nowhere concerned to the suit properties, moreover he can prove his case OS.No.134/2016 which is filed for the relief of specific performance of contract. Hence, prayed to reject the application with heavy costs.

6. **Order 1 Rule 10 (2)** reads thus,

*“(2) **Court may strike out or add parties-** 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 to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectual and completely to adjudicate upon and settle all the questions involved in the suit, be added.”*

It is clearly reported in

“AIR 1978 P&H 192 – Parties when added

Under this rule, a person may be added as a party to a suit in the following two cases-

- 1. When he ought to have been joined as plaintiff or defendant, and is not joined so; or*
- 2. When, without his presence, the questions in the suit cannot be completely decided.”*

7. Thus, a persons should not be added as a defendants merely because he would be incidentally affected by the judgment. The power of a court to add a party to proceedings cannot be depend solely on the question whether they are an interest in the suit property. In order that a party may be considered a necessary party defendant, two conditions must be satisfied; first, that there must be some right to some relief against him in respect of the matter involved in the suit. It has been stated that a necessary party is one without whom no decree can be made effectively.

8. This is suit for partition and separate possession. Everybody who is having the share and who are the owners of suit properties are necessary parties to the suit. It is stated by the plaintiff in her

objections that, the present proposed defendant No.4 has filed OS.No. 134/2016 on the file of this court in respect of suit schedule A-2 property of the present suit. With respect of same property the present defendant No.1 has filed suit for permanent injunction against proposed defendant No.4.

9. Therefore, it is clear that, before this court suit for specific performance of contract and suit for permanent injunction are pending in respect of suit schedule A-2 property. In both the suits the proposed defendant No.4 is a party. Therefore, discretion is provided to exercise power judicially so as to determine the necessity of parties whose right is involved in dispute and impleading the proposed defendant No. 4 will not in any way prejudicially affect the parties to the case. If the proposed defenadnt is not impled then, there may be conflicting decisions in all the cases and thereby causing injustice to proposed defendant. Therefore, I answer Point No.1 in the affirmative.

10. Point No.2: In view of my answers to point No. 1, I proceed to pass the following: -

ORDER

The application ie., IA.No.1 filed U/o 1 Rule 10 R/W Section 151 of CPC filed by the proposed defendant No.4 is hereby allowed.

The proposed defendant No.4 is impleaded as defendant No.4.

The plaintiff is directed to carry out amendment of plaint by adding defendant No.4 in the cause title.

(Dictated to the Stenographer, transcription typed by her, revised and corrected by me, signed and then pronounced in the open Court on this 16th day of August, 2019)

(RAJESH N. HOSAMANE)
Civil Judge & JMFC,
Byadgi.