

KAKB220011492016



Presented on : 12-07-2016
Registered on : 12-07-2016
Decided on : --
Duration :

**IN THE COURT OF THE PRL.CIVIL JUDGE & JMFC,
AT ALAND**

PRESENT

**SRI. CHANDRAKANTH, B.Com, LL.M.,
PRL.CIVIL JUDGE & JMFC,
ALAND**

DATED THIS THE 2ND DAY OF DECEMBER- 2021

O.S. NO.111/2016

PLAINTIFF : Iranna.

-Vs.-

DEFENDANTS : Davoodkhan & Others.

I.A.

PLAINTIFF/S/OPPONENT/S:

Iranna S/o. Malkarjappa Lende,
Aged 75 years, Occ: Agriculture,
R/o. Village Jawalaga, Tq: Aland, Dist: Kalaburagi.

(By Sri. P.N.Shah, Advocate)

-Vs.-

DEFENDANT/S/:

1. Davoodkhan S/o. Gudubasha Mullan,
Aged 50 years, Occ: Agriculture,
R/o. Village Jawalga(J), Tq: Aland.
2. Maheboob S/o. Ismail,
Aged 30 years, Occ: Agriculture,
R/o. Village Jawalga(J), Tq: Aland,
Dist: Kalaburagi.
3. Prashant S/o. Haridas Pawar,
Aged 30 years, Occ: Household,
R/o. Village Khasagi, Tq: Omerga,
Dist: Osmanabad.
4. Ganapati S/o. Laxman Jamadar,
Aged 55 years, Occ: Agriculture,
R/o. Village Jawalga(J), Tq: Aland,
Dist: Kalaburagi.

(D1, 3, 4 - by Sri. B.A.Deshpande, Advocate,
D2 – Smt. J.N.Hanchate, Advocate,

PROPOSED DEFENDANT/THIRD PARTY APPLICANT:

5. Dhanraj S/o. Siddu Algode,
Aged 47 years, Occ: Agriculture,
R/o. Kasagi, Tq: Omerga, Dist: Osmanabad(MH).

(D5 – by Sri. M.M.Chincholikar, Advocate)

**ORDER ON I.A. FILED U/O.1 RULE 10 R/W 151 OF CPC
BY THE PROPOSED THIRD PARTY APPLICANT**

The applicant has filed an application under Order 1 Rule10 of CPC, to implead them in the present suit.

2. **Averment of the applicant.**

The third party by name Dhanaraj S/o. Siddu Algode filed application under Order I Rule 10 of CPC praying before the court to implead himself as proposed defendant No.5 in this case. In the accompanying affidavit this applicant has submitted before the court that, he is holding land bearing Gat.No.206 adm.1 Hector 83 R. of village Kasagi, Tq: Omerga. Towards South side of this land, after Maharashtra and Karnataka border, there is a land of plaintiff and defendants No.1 to 4 Land bearing Sy.No.94 of Jawalaga [J] village. Sy.No.4 of this case and Gat. No.206 of Kasagi village are adjacent to each other. There is Maharashtra and Karnataka Border in between these two lands. There is a height of 6' feet to 8' feet and not 30' feet width between the land as alleged by plaintiff in para No.3 of his plaint. This applicant further deposes in his affidavit that, the suit of the plaintiff is totally depends upon unlawful terms of compromise in O.S.No.16/2005 at the time of compromise. The plaintiff and defendants No.1 and 2 have not acted within their authority. If plaintiff and defendants No.1 to 4 let out their rain water, they will come to the land of this proposed defendant. The applicant further submits in his affidavit that, the Civil Judge, Junior Division, Omerga has passed a decree in RCS No.321/16 dated 27.04.2017 against the present defendants No.1 and 3. Looking to the decree in RCS No.321/2016 and a compromise decree in O.S.No.16/05 there is a possibility of

different views in this suit. Therefore, the applicant prayed to implead him as one of the party in the present suit.

3. The plaintiff has filed objection to the said application contending that, the proposed defendant is from Maharashtra. In between his land and the land of the plaintiff there is Maharashtra boundary road and therefore, the defendant's land and the plaintiff's land are not adjacent to each other.

4. The plaintiff has also stated in his objection that, the proposed applicant has himself stated that he has purchased his land recently after filing of this suit from Davoodkhan i.e. defendant. It is also admitted by the proposed defendant that the plaintiff had filed a suit in O.S.No.16/2005 against defendant Davoodkhan and Maheboob and the said suit was decreed in favour of this defendant by this court and therefore, this proposed petition is bound by the said decree of 16/2005.

5. The plaintiff has filed his objection stating that, the plaintiff is the master of this suit and the proposed defendant cannot impose himself on the plaintiff and the presence of proposed defendant is not at all necessary in this suit.

6. The plaintiff has contended that, as per the decree in O.S.No.16/2005, the rain water of the land of the plaintiff is agreed to be let out on the north of the Maharashtra Border Road. The Maharashtra border is a government property or it

is no man's land and the proposed defendant cannot have a claim either against the plaintiff or the defendants.

7. The plaintiff has contended that the decree got passed by the proposed defendant is well after the institution of the present suit and it is a collusive decree got passed by the proposed defendant. Conspicuously in the said suit in Maharashtra Court the proposed defendant Dhanaraj has not disclosed to the said court about the existence of the decree passed in O.S.No.16/2005. Hence, prayed to reject the application.

8. Heard both the counsel on I.A.

9. On perusal, the following points arose for my consideration:

POINTS

1. Whether the proposed defendant No.5/3rd party applicant is necessary party to the suit?

2. What order?

10. My findings to the above points are as under:

POINT NO.1 : In Affirmative,

POINT NO.2 : As per final order,

For the following:

REASONS

11. **POINT NO.1:-** The applicant in her application has submitted that her land is towards northern side of the

property belonging to the plaintiff and defendants No.1 and 2. She has obtained a decree from the Civil Court of Maharashtra in respect of Gat. No.206 ADM.1 Hector 83 R. In RCS No.321/2016 dated 27.04.2017 against the defendants No.1 and 3 from restraining permanently from letting the rain water from the land of defendants No.1 and 3. Her concern is that, after completion of hearing in the present matter, this court may take different view from that of the view taken in RCS No.321/16 by the Civil Court, Omerga. Therefore, the impleading applicant intend to be part of this suit.

12. From the above facts, it is clear before the court that, the property of the proposed defendant is adjacent land to the land of defendants and plaintiff. There is another compromise entered into between defendants No.1 and 2 in O.S.No.16/2005, in which it is agreed between the parties that, they will not release the rain water of their land in Sy.No.94. It is further decreed in the said compromise decree that the defendants No.1 and 2 will not release the rain water on the north of Maharashtra border road. The said decree is compromise decree between the parties to that suit. It is binding on between the parties who were party to the said suit and not to anyone else.

13. To come to the complete conclusion and to put an end to the entire case it is just and necessary to bring the proposed defendant on record, so as to avoid any contrary view, against the view taken in the previous suits between the parties. Therefore, in my view it is just and necessary to implead the proposed defendant No.5 in the suit.

Further, order 1 Rule 10[2] CPC reads as under:

“ [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 effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

[3] No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent”

Order 1 Rule 1 CPC reads as thus:

[1. Who may be joined as plaintiffs.- All persons may be joined in one suit as plaintiffs where-

a] any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to

exist in such persons, whether jointly, severally or in the alternative; and

b/ if such persons brought separate suits, any common question of law or fact would arise].

Rule 3. Who may be joined as defendants. - *All persons may be joined in one suit as defendants where -*

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and

(b) if separate suits were brought against such persons, any common question of law or fact would arise.

As per the above provisions, it is clear that, if a person shows a fair semblance of interest he can certainly file an application for impleadment. The persons who are necessary parties cannot be denied impleadment, it is mandatory under law.

14. In this case, prima facie, it seems that, the proposed defendant No.5 is having right of impleadment and is having locus in the matter. Without impleading the proposed defendant the suit cannot be disposed of effectively. In other words, for complete and final decision of the questions involved in the proceedings and to avoid multiplicity of suits on the same subject and to avoid conflict of decisions, in my opinion the proposed defendant No.5 is proper and necessary party. Therefore, I answer point No.1 **IN AFFIRMATIVE.**

15. **POINT NO.2:** - In view of affirmative finding on Point No.1, the application is required to be allowed. Hence, I proceed to pass the following order:

ORDER

I.A. filed by the proposed defendant No.5 under Order 1 Rule 10 for impleading himself in the suit is hereby allowed.

For amendment in plaint and for filing amended plaint.

(Dictated to the Stenographer on Computer directly, typed by him, Order corrected and signed by me, then pronounced by me in the Open Court on this the 2nd day of December - 2021)

Date: 02.12.2021.

(CHANDRAKANTH)
PRL.CIVIL JUDGE & JMFC
ALAND

Dictated on : 02.12.2021.
Checked on : 02.12.2021.
Signed on : 02.12.2021.

(CHANDRAKANTH)
PRL.CIVIL JUDGE & JMFC
ALAND