

**IN THE COURT OF CIVIL JUDGE & JMFC AT JEWARGI.**

Present:

**Sri Namadev Kamanna Salamantapi,**  
**B.A. LL.B (Spl.)**  
Civil Judge & JMFC Jewargi.

Dated this the 8<sup>th</sup> day of December 2016.

**O.S.No.115/2014**

**Plaintiffs:**

Ifteqar Hussain Late. Mohd. Mustaq Hussain, Age: 42 years, Occ: Business, R/o H.No.11-53, Jewargi (K), Tq. Jewargi, Dist. Gulbarga and another.

(Sri. G.B. Advocate)

-V/s-

**Defendants:**

1) Sadiq Hussain S/o Late Mohd. Mustaq Hussain, Age: 40 years, occ: Business, R/o H.No.11-53, Jewargi (K), Tq. Jewargi, Dist. Gulbarga and others.

(Sri. J.V.H. Advocate)

**I.A.No.3.**

Applicant : Ashfaq Hussain S/o Late Mushtaq Hussain.  
Vs.  
Opponent : Ibrahim Patel S/o Imam Patel  
Ferazabadi.

**ORDER ON I.A.No.3.**

1. That the applicant/plaintiff No.2 has filed I.A.No.3 U/O 1 Rule 10(2) of CPC seeking to add the proposed defendant as defendant No.10 in the present case.
2. In support of this application the plaintiff filed his affidavit stating that, they have filed suit against the defendants for the relief of partition and separate possession. After filing the suit this court granted the order of Temporary Injunction restraining the defendants from alienating the suit properties. In spite of that the defendant No.5 alienated the suit property No.4 in favour of one Ibrahim Patel S/o Imam Patel through registered sale deed document bearing No.1972/2014-15 dated 08-07-2014. Now in the changed circumstances the plaintiffs are bound to challenge the illegal sale deed and the person in whose favour the sale deed is executed is a necessary party to the present suit. The presence of proposed defendant No.10 is necessary for adjudication of the matter. Hence, he prayed to allow the application.
3. On the other hand, the learned counsel for the proposed defendant No.10 filed objections stating that, defendant No.5 was the absolute owner and possessor bearing Plot No.47 Panchayat No.43-64 situated in 313/A and she has sold to proposed defendant No.10 through registered sale deed bearing document No.1972/2014-15 dated 08-07-2015 and

handed over the possession of property to the proposed defendant No.10. The plaintiffs and any other persons have no right, title or interest and nobody has any share in the said property, hence plaintiffs have no right to implead the proposed defendant No.10 has no right to challenge the sale deed executed by defendant No.5. Hence, the application filed by the plaintiff U/O 1 Rule 10(2) of CPC liable to be rejected. Hence, she prayed to reject the application.

4. Heard both sides and examined the materials placed on record.
5. The following points are arises for my consideration.
  1. Whether applicant/plaintiff No.2 has made out sufficient grounds to allow his application?
  2. What order?
6. My answer to the above points are as under:
  - Point No.1: In the affirmative.
  - Point No.2: As per final order for the following;

### **REASONS**

7. **Point No.1:-** I have gone through the contentions taken by both parties. I have perused the entire materials available on records. The plaintiffs have filed suit against the defendants for the relief of

partition and separate possession of their share in the suit properties. The plaintiffs have sought relief of partition and separate possession in the suit property Plot No.47 Panchayat No.43-64 situated in 313/A also. It is the contention of the plaintiff that, during the pendency of suit the defendant No.5 has sold out the suit property Plot No.47 Panchayat No.43-64 situated in Sy.No.313/A to proposed defendant No.10 and he is necessary party to the proceedings.

8. It is the contention of the defendant No.10 is that, defendant No.5 is the absolute owner and in possession of the property Plot No.47 Panchayat No.43-64 situated in 313/A and defendant No.5 has sold out the said property to defendant No.10 through document bearing No.1972/2014-15 dated 08-07-2015 and handed over the possession of property to the proposed defendant No.10 and he is peaceful possession and enjoyment of the said property.
9. In support of contention of the plaintiffs the learned counsel for the plaintiffs relied upon the decisions of Hon'ble High Court of New Delhi and Hon'ble High Court of Karnataka as under:
  - 1) CS (OS) No.2014 of 2011 in the case of Kamalesh Sharma @ Kamlesh Mumari and another Vs. Satya Devi and others.

2) WP No.13520 of 2012 (GM-CPC) in the case of Smt. Narayanamma Vs. H.M.Krishnappa and others.

10. The plaintiffs filed suit against defendants for the relief of partition and separate possession of their share in the suit properties. It is not dispute that, during the pendency of the suit one of the suit property Plot No.47 Panchayat No.43-64 situated in Sy.No.313/A was sold out to the proposed defendant No.10. It is the contention of plaintiff that he is going to challenge the sale deed which executed by defendant No.5 in favour of proposed defendant. Therefore, to protect his rights involved in the Plot No.47 Panchayat No.43-64 situated in Sy.No.313/A it is necessary to implead the proposed defendant as party to the proceeding. Further, after going through the entire materials available on records I feel that, the presence of the proposed defendant is necessary to adjudicate the matter completely. In the above decisions relied by the learned counsel for the plaintiffs their lordships observed that, where a sale deed has been executed by a party to a partition suit during the pendency of such suit then the buyer of such property has to be made a party. And the party cannot be confined to the defence set up by the other side.
11. Therefore, in view of the above discussion I am of the opinion that, in this partition suit the presence of

purchaser is necessary for effective and complete adjudication of issue involved in the suit. Hence, I am of the opinion that, plaintiff No.2 has made out sufficient grounds to allow the application. Hence, I answer Point No.1 in the affirmative.

12. **Point No.2:-** In view of the above discussion and my answer to point No.1 in the affirmative, I proceed to pass the following:

**ORDER**

**I.A.No.3 filed U/O 1 Rule 10(2) of CPC by the applicant/plaintiff No.2 is hereby allowed.**

**The plaintiff No.2 is directed to cause amendment in the cause title of the plaint and furnish the amended plaint copy.**

(Dictated to the Stenographer, typed by him and corrected by me and then signed and pronounced in the open court on this the **8<sup>th</sup> day of December 2016.**)

**(Namadev Kamanna Salamantapi)**  
Civil Judge & JMFC, Jewargi.