

KAKB620005512022

**IN THE COURT OF CIVIL JUDGE AND J.M.F.C., AT: JEWARGI****Present:**

SRI. KASHINATH UPPAR,
B.Sc, LLB
Civil Judge & JMFC, Jewargi.

E.P.No.04/2022**Dated this the 13th day of November-2025.**

DHr: Gurannagouda S/o Sahebgouda Patil,
Age: 62 years, Occ: agriculture,
R/o Malla village, tq; Surpur, dist: Yadgir.

(By Sri. J.V.H., Advocate)***//VERSUS//***

JDr: Abdul Sab S/o Chand Sab Khaji,
Age: 65 years, occ:Agriculture,
R/o Wadagera, tq: Jewargi, dist: Kalaburagi.

(By Sri. P.K. Advocate)**PARTIES TO I.A.No.II & III**

Applicant/ Chand Pasha S/o Mashak Sab

//Vs//

Opponent/ Gurannagouda S/o Sahebgouda Patil,

**COMMON ORDER ON IA No.2 AND 3 FILED BY THE
APPLICANT U/o 1 Rule 10(2) of C.P.C.**

The applicant has filed this IA No.2 U/o.1 Rule 10(2) of C.P.C to implead him as respondent No.2 in the present petition and IA No.3 U/s.151 of cpc to recall the order passed on IA No.1 dated 15.11.2022.

KAKB620005512022



2. The applicant sworn to the affidavit stating that he had filed suit against the Jdr/respondent and others in respect of petition schedule seeking relief of partition and separate possession on the file of Senior Civil Judge, Jewargi in O.S.No.176/2022 and same was decreed on 23-02-2023 declaring that, the applicant is entitled for 1/7th share in the petition schedule property. Recently, applicant came to know as to pendency of this execution petition and on verification of documents pertaining to this case through his counsel came to know that Dhr and Jdr in collusion with each other got created the agreement of sale pertaining to the petition schedule property and succeeded in getting judgment from this Hon'ble Court in O.S.No.98/2014 dated 20-09-2021.

3. In pursuance of collusive decree, petitioner filed this case. As per the judgment and decree passed in OS No.176/2022 by the Hon'ble Senior Civil Judge, Jewargi, the applicant is entitled for 1/7th share in petition schedule property. Hence, the applicant became necessary party in this case and opportunity may be given to him to prove claim or to avoid further litigation. Therefore, prayed before the Hon'ble court to allow the application and add me as 2nd respondent to meet the ends of justice.

4. The applicant filed IA No.3 U/s.151 cpc praying to recall the order passed on IA No.1 dated 15.11.2022.

5. DHR counsel filed objection to IA No.2 and 3 to oppose the claim of third party applicant. Wherein, he stated that The proposed petitioner/applicant has no right to implead in the present E.P. The proposed petitioner/applicant has filed the collusive suit in O.S.No.176/2022 and got the collusive decree on 23-02-2023. The

KAKB620005512022



defendants of the said suit have not appeared and not seriously contested the said suit in O.S. No.1176/2022. The judgment debtor of this E.P. was defendant No.2 in O.S.No.176/2022 but he also remained ex-parte and allowed to pass the decree only with an intention to play fraud not only on the decree holder, he has also played fraud on the Hon'ble court. The Jdr intentionally not appeared in the said suit and not disclosed about the passing of decree against him in O.S.No.98/2014.

6. The proposed applicant may proceed with the decree in O.S.No.176/2022 but the applicant cannot implead himself in the present E.P. The JDr was the owner and in possession of suit property of present E.P. and he has executed an agreement for sale in favour of decree holder by receiving the consideration amount and when the JDr failed to execute the registered sale-deed the decree holder filed the suit ad the same was decreed.

7. The Hon'ble court was rightly passed on order on I.A.No.1 to appoint the court commissioner to execute the sale-deed. The proposed applicant has no right to file the application for recall order on I.A.No.I. Jence the I.A.No.II and III are fit to be rejected.

8. Heard arguments.

9. On considering the IA, IA affidavit, the points that would arise for my consideration are as under:

1. Whether the Interim application No.2 and 3 filed by the applicant has made out the grounds to allow the applications ?

2. What Orders?

KAKB620005512022



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

Point No.1 : In the **Negative**.

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

REASONS

11. **Point No.1:-** Admittedly, DHR filed this petition for execution of judgment and decree passed in OS No.98/2014. When the matter is posted for further steps, the third party applicant has filed these IAs to implead him as respondent No.2. It is the contention of the applicant that DHR and JDR No.1 colluded each other they have got collusive decree before this court in OS No.98/2014. It is the contention of the third party applicant that, in judgment and decree passed in OS No.176/2022 by the Hon'ble Sr. C.J. Jewargi, the petition property is also property in OS No.176/2022 and Hon'ble Court was passed judgment that the applicant is entitled for 1/7th share in the suit property. This Hon'ble Court was passed order on IA No.1 on 15.11.2022 by appointing court commissioner to execute the agreement for sale in favour of DHR. If court commissioner execute the sale-deed as per order of the Hon'ble Court it will defeat the rights of the third party applicant. Therefore, he prayed to allow the IA No.2 and 3.

12. Per contra, DHR counsel filed objection that, JDR No.1 and the applicant have colluded each other and obtained collusive decree in O.S.No.176/2022. The DHR in the said suit has not appeared and not seriously contested the said suit in O.S. No.176/2022. The judgment debtor of this E.P. was defendant No.2 in O.S.No.176/2022 but he also remained ex-parte and allowed to pass the decree only with an intention to play fraud not only on the decree holder, he has also played fraud on the Hon'ble court. The Jdr intentionally not appeared in the said suit and not disclosed

KAKB620005512022



about the passing of decree against him in O.S.No.98/2014. Hence, the third party applicant is not a proper and necessary party and he has remedy in OS No.176/2022.

13. At this stage, in a decision reported in **AIR 2005 SC 2813** in between **Kasturi V/s. Iyyam Perumal**, Hon'ble Apex Court while dealing with application filed U/o.1 rule 10 of C.P.C. in a suit filed for the relief of specific performance of an agreement of sale pleased to held that

“Unless the proposed parties have any subsisting rights, their application to get themselves implead cannot be entertained.”

14. The aforesaid said judgment is applicable to this case. Admittedly, DHR filed suit OS No.98/2014 for specific performance against JDR. The said suit was decreed and this Hon'ble Court was directed the JDR to execute the agreement of sale in favour DHR. It is the contention of the third party applicant that in OS No.176/2022 before Hon'ble Sr. CJ, Jewargi decreed that he is entitled for 1/7th share in the suit property. But, he was not a party in OS No.98/2014. Therefore, this court is of the opinion that the applicant has remedy in OS No.176/2022. Moreover, this Court cannot go against his own judgment.

15. At this stage it is useful refer the decision of the **Hon'ble Orissa High Court** in a decision reported in **AIR 1975 Ori 86** in between **M/s. Jayashree Chemicals Ltd., /Vs/ K. Venkatarathnamma & Another**, pleased to held that in a suit filed for eviction, impleading third party who has been claiming title over the suit schedule property, it would amounts to conversion of suit from eviction to declaration of title, Hence such application seeking

KAKB620005512022



impediment of the third party is not permissible. In the present case also if the application is allowed it would definitely convert the suit from specific performance of contract to partition. Further if present kind of applications are allowed, such applications would enlarge the scope of the suit for specific performance of contract to suit for partition. Further the aspects involved in a suit for specific performance and aspects in a suit for partition are entirely different. Therefore, I am of the opinion that the applicant is neither necessary party nor proper party in the present suit in order to adjudicate the real controversy in between the parties. Under the circumstances discussed above the IA No.2 and 3 filed by the applicant is deserves to be dismissed. Hence I answer Point No.1 in the Negative.

16. **Point No. 2:** For the foregoing reasons assigned in point No. 1, I proceed to pass the following

ORDER

The IA No.2 U/o.1 Rule 10(2) of
C.P.C and IA No.3 U/s.151 of cpc field
by the applicant is hereby dismissed.

No order as to costs.

(Dictated to the stenographer, transcribed by him. The transcript revised by me, and then pronounced in the open court on this the 13th day of November 2025.)

(Kashinath V. Uppar)
Civil Judge & J.M.F.C.,
Jewargi.

Visit ecourts.gov.in for updates or download mobile app “eCourts Services” from Android or iOS