

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND JMFC AT
SEDAM**

PRESENT: SRI. SAGAR GURUGOUDA PATIL

B.A., LL.B (Spl).

Senior Civil Judge & JMFC, Sedam.

DATED THIS THE 19th DAY OF JUNE-2024.

OS.No.62/2018

Plaintiff : M/s.Dalmia Cement (Bharat) Ltd.

Versus

Defendants : Kalyanappa and others

Parties to IA No.9

Applicant : Basamma W/o Dharmarao

(By Sri.V.J.M. Advocate)

V/s

Opponents : M/s.Dalmia Cement(Bharat) Ltd

(By Sri.S.K.D. Advocate)

Order on I.A.No-1 Under Order 1 Rule 10 of CPC

The applicant by name Basamma W/o Dharmarao has filed this IA U/O 1 Rule 10 of CPC on 20.4.2024 and sought to implead her as party to this suit.

2. The applicant has sworn to an affidavit in support of IA and stated that the suit property is joint family property and she is one of the share holders. Her right is involved in the suit. Hence, she is necessary party to this suit. Hence, prays to allow the IA.

3. The plaintiff has filed objections to IA No.9 on 10.6.2024 and contended that the suit is one for specific performance of contract of sale and third party to the agreement has filed this application. She is not necessary party to the suit. Hence, prays to dismiss the IA.

4. Perused the records. Heard arguments.

5. On the basis of the above rival contentions the following points arise for my consideration.

- 1) Whether the applicant is the proper and necessary party to this suit?
- 2) What order?

6. My findings on 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:-** It is the case of the plaintiff that the defendant being the absolute owner of the suit property agreed to sell the suit property to the plaintiff for a sale consideration amount of Rs.73,43,125/-

and received Rs.23,10,500/- through cheques as advance sale consideration amount and executed registered agreement of sale dated 3.6.2014. Further the plaintiff paid Rs.18,95,000/- through cheque on 4.6.2014 under the supplementary agreement of sale dated 4.6.2014. The plaintiff is always ready and willing to perform his part of the contract. But the defendants have failed to execute the sale deed as per the terms of the agreement of sale. Therefore the plaintiff has filed this suit on 8.6.2018 for the relief of the specific performance of contract against the defendants. When the matter was posted for arguments the applicant has come up with this application claiming that the suit property is joint family property and she is one of the share holders. The plaintiff has opposed the IA contending that the applicant being third party to the agreement of sale is not either proper or necessary party to this suit.

8. The RTC extract at Ex.P.4 shows that the suit property is standing in the name of late Mahadevamma, Nagendrarao S/o Somashekharappa, defendant No.2 and applicant herein to the extent of 4 acres 09 guntas, 5 acres, 5 acres and 5 acres respectively. The column No.10 of the RTC extract further shows that the names of defendant No.2 and applicant were mutated as per MR dated 22.9.2017 on the basis of inheritance. The above RTC extract goes to show that the name of third party applicant is appearing in the RTC extract of the suit property and therefore it appears that she is having right in the suit property. Since the name of third party applicant is appearing in the RTC extract of the suit property she is also required to execute the sale deed. Therefore, in her absence if the suit is decreed it would become difficult to execute the decree. Therefore, the third party applicant is also proper and necessary party to this suit. Hence, I answer point No.1 in the Affirmative.

9. **Point No.2:-** For the foregoing reasons, I proceed to pass the following:

ORDER

IA-9 filed by the applicant Under order 1 Rule 10 of CPC is hereby allowed.

The third party applicant is hereby impleaded as defendant No.4.

The plaintiff is hereby directed to amend the plaint and furnish amended plaint within 10 days from the date of this order.

(Dictated to the Stenographer directly on computer and corrected by me and then pronounced by me, in the open Court on this the **19th day of June-2024**, at Sedam)

(Sagar Gurugouda Patil)
Senior Civil Judge & JMFC,
Sedam.