

**IN THE COURT OF THE ADDL.CIVIL JUDGE AND JMFC,AT
VIRAJPET**

Present: Smt.C.Mahalakshmi B.A.L., L.L.M.,
Addl. Civil Judge and JMFC, Virajpet.

O.S.No.49/2012

Dated this the 6th day of June 2022.

PLAINTIFF : Shubha.P.Damani

(By Sri N.G.Kamath,advocate)

V/S

DEFENDANTS : A.G.Bopanna and others

(D.1 By Sri. S.R.Jagdeesh,D.2 abatted,
D.3 Sri.I.R.Promodh,advocate, proposed
D.4 By Sri.A.B, advocate)

PARTIES IN I.A.NO.XVIII

PLAINTIFF / : Shubha.P.Dhamani
PETITIONER

V/S

DEFENDANT/ :A.G.Bopanna and others
RESPONDENTS

ORDERS ON I.A.NO.XVIII

1. The plaintiff has filed I.A.XVIII under Order I Rule 10(2)
of CPC seeking to permit him to implead the person mentioned
in the application as defendant no.4.

2. In the accompanying affidavit to I.A.No.XVIII, the plaintiff has stated that the suit is for Permanent injunction and Possession. During the pendency of the above case, the proposed defendant no.4 has illegally trespassed into the suit schedule property and has destroyed well grown coffee, pepper and coconut trees to the extent of 1.00 acres of land in order to construct a building in the suit schedule property and thereby defeat the interest of the plaintiff which fact he has come to knowledge on 22.10.2021. He has lodged a written complaint on 23.10.2021 to the Sub-Inspector of police, Virajpet Town Police station personally however they have refused to entertain his complaint. The proposed defendant no.4 is necessary party. Therefore, he prayed to allow the application.

3. The proposed defendant no.4 has filed objections and stated that the proposed defendant has not trespassed nor destroyed any plants as alleged by the plaintiff. The property bearing Sy.No.53 of an area of 4.81 acres was purchased by him in the year 1995, wherein a suit was pending before this

Hon'ble court in O.S.No.459/1990, against the plaintiff in the case filed by A.M.Devaiah and others, for declaration and eviction. The said suit was decreed on 10th December 1996 directing the defendant i.e., plaintiff herein to vacate an area of 1.03 acres and the said decree was executed by filing an execution petition no 9/2007 before the Hon'ble Principal Civil Judge, Virajpet through proper process of survey and Mahazar by Court Amin. The said area of 1.03 acres was taken possession on 23rd March 2009, ever since then property is in peaceful possession of this defendant and he has applied for conversion of said land bearing Sy.No.53 to house sites which under due process vide order got converted the area into house site and few sites were sold.

4. The boundary of Sy.No.53 towards East is Sy.No.54, West is Sy.No.56/1, North is Sy.No.53/2 and 53/3 and South is property of 1st defendant. No where the property of plaintiff is encroached and the plaintiff has to make clear the extent and area by proper survey to prove the encroachment if any done by this defendant, based on the report of encroachment if

any the impleading application can be entertained, not on assumption. The defendant will be put into hardship, loss misery and agony by vaguely filing the application to implead him as proposed defendant, as the sale of plots in Sy.No.53 will be blocked. Hence, he prayed to reject the application.

5. Heard.

6. Perused the case material placed on record.

7. After going through the application with affidavit, the following points arise for my consideration:-

1. Whether the plaintiff has made out grounds to allow the I.A.No.XVIII?

2. What order?

8. My answer to the above points: -

Point No.1	:	In the NEGATIVE
Point No.2	:	As per the final order for the following.

REASONS

9. **POINT NO.1:-** The case of the plaintiff is that she is the owner of the suit schedule property. The property belonging to the plaintiff is governed by her Power of Attorney

Holder as she is situated out of the country. The entire property mentioned in the schedule was demarked and protected by barbed fences a few years back. The northern and western boundaries of the "B" schedule is encroached by defendant no.2 and 3. The defendant no.2 and 3 in collusion with the defendant no.1 is trying to knock off major portion of plaintiff by way of encroachment and trespass. Therefore, the plaintiff has filed the suit against the defendant no.1 to 3 for the relief of Permanent Injunction. Subsequently, the plaint was amended on the grounds that during the pendency of the suit the defendant no.1 to 3 have encroached a substantial portion. Therefore, the relief of possession was subsequently included. Now the application is that during the pendency of the case the proposed 4th defendant has trespassed into the schedule property and destroyed well grown plants. Therefore, he has sought for the inclusion of proposed 4th defendant. At this juncture, it is pertinent to refer to Order II Rule 3 of CPC which states that Joinder of cause of action:- Save as otherwise provided a plaintiff may unite in the same suit

several causes of action against the same defendant, or the same defendants jointly and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

10. Where causes of action are united the jurisdiction of the court as regards the suit shall depend on the amount or value of the aggregate subject matters at the date of instituting the suit.

11. Therefore, from the perusal of the above said provision shows that the assertion of the plaintiff is that the defendant no.1 to 3 and the proposed defendant have encroached the portion of the schedule property. Whereas, the date of encroachment is different, the cause of action is different. If the present application is allowed, and the proposed defendant is permitted to come on record it will lead to conflict of interest interse. Therefore, it can be held that the different cause of action in the same suit would amount to misjoinder of cause of action. Therefore, the application filed

by the plaintiff to implead proposed defendant no.4 needs to be rejected. Therefore, the above issue is answered in **NEGATIVE.**

12. **POINT NO.2:-** In view of the forgoing reasons and discussion, this court pass following.

ORDER

The I.A.No. XVIII under Order I Rule 10(2)
of CPC filed by the plaintiff is rejected.

(Dictated on line computer to the stenographer computerized by him corrected, then signed by me and pronounced in the open court on this the 6th day of June 2022)

sd/-

**Addl.Civil Judge and JMFC
Virajpet**