

KAKD520023202022 1 Original Suit No. 131/2022



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

PRESENT

PRESENT : Sri. PRADIP POTADAR, B.COM. LL.B.,

Addl. Civil Judge & JMFC.,

Dated, this the 02nd day of February 2024

Original Suit No. 131/2022

PLAINTIFF : B.N.Varija, W/o B.T.Nanaiah
Aged 60 years, R/o Karmad
Village, S.Kodagu

(By Sri.K.V.Sunil, Advocate)

V/s

DEFENDANTS : 1.U.C.Bopanna
S/o Late Chengappa
Aged 75 years
R/o Karmad Village and post
Ammathi, S.Kodagu

(Sri.Nellamakkada.B.Devaiah, Advocate)

2. The Tahasildar, Virajpet Taluk
Virajpet.

3. The Revenue Inspector, Ammathi
Revenue Hobli, Ammathi, S.Kodagu

4. Village Accountant, Karmad Village
Circle, Ammathi, S.Kodagu.



5. N.Nagesh, Licenced Surveyor
attached to the office of the
Tahasildar and ADLR Office
Virajpet

(Smt.C.Vijayalakshmi, Advocate)

6. The Chief Secretary
Government of Karnataka
Vidhana Soudha, Bangalore

7. The A.D.L.R., Virajpet Survey
Department, Virajpet Taluk

(By Asst. Govt. Pleader for defendants no.2,
3, 4, 6 and 7)

PARTIES TO I.A.No.V

APPLICANT : K.M.Saravathi,
W/o Late Kuttanda.P.Muthappa
Aged 61 years, R/at Karmad
Village, Ammathinad, Virajpet Taluk

V/s.
OPPONENT : B.N.Varija and others

**ORDERS ON I.A U/O. I R. 10(2) R/W section 151 OF
CIVIL PROCEDURE CODE.**

The applicant has filed this I.A seeking
permission to implead in this suit as defendants no.8 .



2. In the affidavit annexed to the application it is stated the plaintiff was not a party to the above suit. It is learnt that the 1st defendant while filing written statement had also filed a counter claim under order VIII Rule 6A of CPC stating that he had purchased about 0.30 acres of wet land from applicant husband K.P.Muthappa by way of an alleged Registered Deed of sale date:11.12.1998 and registered as document no.742/98-99 in the office of the Sub-Registrar, Virajpet, South Kodagu. Applicant husband had not sold any land to any person much less the counter claim schedule property. Her husband till his life time had been cultivating the land and growing paddy in wet lands. Thereafter, applicant and her son have been cultivating the said lands and they are in absolute



possession, physical enjoyment of the land stated in counter claim schedule property.

3. It is stated that applicant husband has not gone to the Sub-Registrar Office and executed the above sale deed. It is stated that the documents referred namely the alleged sale deed is a sham document and it was not executed or signed by her husband during his life time. In addition to above, her husband had no individual right to sale counter claim property to 1st defendant. The 1st defendant has colluded with revenue officials and have got transferred revenue documents in his name. The proposed defendant is in possession of 0.30 acres of land.



4. It is sated that the 1st defendant after the alleged fraudulent sale deed made an application to Tahasildar, Virajpet on 11-01-1999 seeking to transfer 0.30 cents to his name. Thereafter, applicant has received notice from the court and aware of fraudulent transaction of defendant no.1. The counter claim schedule property is in possession of applicant from many years. On these grounds the applicant prays to allow the application.

5. On the contrary, the plaintiff has filed objection to the I.A stating that, the I.A filed by applicant is false, baseless application. The proposed defendant has come with present application before this court even though she really knows the fact that her husband has sold the suit property, she has now come with present



and pleaded all absurd facts such as that her husband has not sold any land to any persons much less the counter claim schedule property. Her husband till his wife time had been cultivating land and growing paddy in wetlands and thereafter, she and her son have been cultivating said lands, and they are in possession and enjoyment of counter claim schedule property.

6. It is averred that as per version of proposed defendant K.M.Sarawathi, she has alleged that in sale deed dated 11.12.1998, wherein her right to challenge such sale is within 3 years. She has slept over all these years and come up with present IA and also swearing all such absurd pleadings in affidavit annexed to IA.



7. It is averred that proposed defendant have no moral right to get herself impleaded as defendant no.8. The present applicant is mastermind of either defendant no.1 or persons who are in inimical terms with plaintiff. At such instigation of such persons the proposed defendant has come up with said I.A. On all these grounds the plaintiff prays to dismiss application of applicant.

8. On the contrary, the defendant No.1 has filed objection. It is stated that the proposed defendant has not envisaged any valid reason to implead herself as defendant to present suit and averments sworn by proposed defendant in her affidavit are all false and suit seeking for relief of permanent injunction restraining second to fifth defendants from carrying haddubastu survey of suit schedule property. Wherein,



proposed defendant has taken a different contention which is totally irrelevant to case and hence her application to implead herself as defendant no.8 is not tenable under law. Since proposed defendant no.8 is totally stranger to facts of case and she has no direct or indirect interest over it. Even other wise, if proposed defendant has any grievances or to prove her wishes, she has to file a separate suit on grievances which may be purported to be caused to her. Filing of any such implead application is not sustainable under law and the same is against the provisions of law and natural justice.

9. It is contended that this defendant had purchased an area of 0.30 acres of land from K.P.Muthappa under a registered deed of sale, dated:11.12.1998, document registered as doc no; 742/98-99 at the office



of the Sub Registrar, Virajpet. In pursuance to the above purchase, property was mutated to the name of 1st defendant vide MR,No: T35/2015-16, dated:27.12.2015 and revenue record RTC stands in his name. Ever since from date of purchase, first defendant is in possession of counter claim schedule property and he is personally managing and cultivating same. The plaintiff and proposed defendant is having knowledge about possession of defendant no.1 over counter claim property. Ever since then, she has not questioned this defendant. The first defendant apprehends that proposed defendant probably colluded with plaintiff and filed this IA on false and untenable grounds. Seeking implead in this case is not permissible under law. On all these grounds the



defendant no.1 prays to dismiss application of applicant.

10. Heard and perused I.A affidavit and other materials on record.

11. Now the following points that arises for my consideration:-

1) **Whether the applicant has made out grounds to allow the application filed U/O.1 R.10(2) R/W section 151 of C.P.C.?**

2) **What order ?**

12. On the material available on record, this court answered the above points as under:

Point No.1 : In the NEGATIVE

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

: REASONS :

13. **POINT No.1**:- The present IA is filed by the proposed defendant no.8 seeking as defendant no.8 in



this case. I have perused entire material available on record. The plaintiff has filed this suit against the defendants for the relief of permanent injunction. The defendant no.1 along with written statement has filed counter-claim seeking declaration of title over counter claim schedule property.

14. I have carefully gone thorough I.A. affidavit objections and other material on record. On perusal of affidavit annexed to the IA it appears that the applicant/proposed defendant no.8 seeking impediment as defendant no.8 in the capacity of that husband of applicant has not sold counter claim schedule property through registered sale deed dated 11.12.1998 to the defendant no.1. The applicant has denied about execution of counter claim schedule property to the defendant no.1. It is submitted that the



proposed defendant no.8 along with her son are in possession of counter claim property. Overall perusal of contents of affidavit it appears that proposed defendant no.8/applicant without challenging sale deed by separate suit, seeking to implead as defendant no.8 in this suit.

15. It is to be noted that sale deed is registered on 11.12.1998 as per the contents of the affidavit. This suit is filed in the year 2022. It appears that 25 years have been lapse after execution of the said deed. Now the version of applicant/proposed defendant no.8 appears to be that she is creating cause of action by impleading herself in this case. The contents of the affidavit are not believable. If really husband of applicant/proposed defendant no.8 has not sold counter claim property to the defendant no.1, the



applicant/proposed defendant no.8 would challenge it at the earliest of time by filing separate suit.

16. I have gone through the documents produced by the defendant no.1. On perusal of RTC extract and tax paid receipts it appears that revenue documents are already transferred in the name of defendant no.1. Further, it is to be noted that in paragraph no.6 of affidavit proposed defendant no.8 submitted that, the 1st defendant on 11.01.1999 made an application to Tahasildar seeking transfer of 30 cents to his name. Thereafter, receiving notice from court, proposed defendant no.8 came to know about fraudulent transaction. This fact itself reveals that the proposed defendant no.8 is having knowledge about the transaction as very long back taken place between her



husband and 1st defendant as above discussed. Whether she has challenged sale deed or not it has not been stated in the affidavit. It appears from the materials available on record that the applicant has not approached this court with clean hands. Thus this court opines that the applicant is not necessary party to the suit for proper adjudication of matter in contrary. **Hence, Point No.1 is answered in the NEGATIVE.**

17. **POINT No.2:** In the result, for the foregoing reasons and findings on Point No.1, this court proceed to pass the following:

: ORDER :

**The interlocutory application
filed by the applicant under order I
rule 10(2) R/w section 151 of Civil**

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**Procedure Code is hereby
dismissed.**

(Dictated to the stenographer, transcript computerized and print-out taken by her, then corrected by me, signed and pronounced in open court on this the 02nd day of February 2024).

sd/-

(Pradip Potadar)
Addl. Civil Judge & JMFC.,
Virajpet