

ORDER ON IA No. VII U/o 1 rule 10(2) R/w Sec. 151 of CPC

This is an interim application filed by the plaintiffs and prayed for permit them to implead the proposed defendant in the above case.

In an annexed affidavit the 2nd plaintiff contended that, she and other plaintiffs brought the suit for the relief of partition and declaration of sale deeds executed by the defendants are null and void and other reliefs. During the pendency of the above suit the 16th defendant sold out the item No. 7 of the schedule property in favour of the proposed defendant under the registered sale deed dated: 11-09-2014 in order to make more and more complication of the suit and to harass the plaintiffs and also to deprive their rights over the suit schedule properties. Hence the proposed defendant is a just and necessary party to the suit for proper adjudication. If the application is allowed no hardship would be caused to the other side, if not allowed, it will cause more hardship and loss to the plaintiffs. On these grounds the plaintiffs prayed for allow the application.

On the other hand the proposed defendant put his appearance through his counsel and filed his objections to the application of the plaintiffs by denying affidavit averments of the 2nd plaintiff and further contended that, the plaintiffs have not sought the relief against the proposed defendant in the plaint or in the relief column. They have to sought for amendment of their pleadings for seeking the relief against the proposed defendant before filing the present application. Under these circumstances the application cannot be looked into and also not maintainable either in law or on facts. On these grounds he prayed for reject the application.

Heard the arguments of both side.

The point arises for court consideration is;

1. Whether the proposed defendant is proper and necessary party to the suit ?

My finding to the above point is in affirmative for the following;

REASONS

It is admitted fact that, the present suit filed by the plaintiffs for the relief of partition and other reliefs. Now the plaintiffs brought the instant application for implead the proposed defendant as defendant No. 17 in the above case. The 2nd plaintiff contended that, during the pendency of the suit the 2nd defendant sold out the item No. 7 of the suit schedule properties in favour of the proposed defendant under the registered sale deed dated: 11-09-2014. On the other hand the proposed defendant has not denied the allegation of the plaintiffs. He has contended that, without seeking the amendment of pleadings, the present application of the plaintiffs cannot be considerable one. On perusal of the affidavit of the 2nd plaintiff it appears that, during the

pendency of the suit the suit schedule property item No. 7 is sold out by the 16th defendant in favour of the proposed defendant under the registered sale deed.

U/o 1 rule 10(2) of CPC reads as under;

U/o 1 rule 10(2) **Court may strike out or add parties** – The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

The present suit filed by the plaintiffs for the relief of partition and other reliefs over the suit schedule properties. Now in instant application the plaintiffs contended that, the 16th defendant sold out the item No. 7 of the suit schedule property in favour of proposed defendant under the registered sale deed. On the other hand the proposed defendant has not denied the allegation of the plaintiffs and he has contended that, without seeking amendment of pleadings in respect of suit schedule property the present application is not maintainable. At this stage it is clear that, the suit schedule item No. 7 property sold out by the 16th defendant in favour of the proposed defendant under the registered sale deed during the pendency of the suit. Therefore if the proposed defendant is not impleaded, it will cause multiplicity of proceedings and the suit of the plaintiff in respect of item No. 7 will become in

fructuous and if the suit of the plaintiffs is decreed it will become a paper decree. On the other hand it is also helpful to the proposed defendant to urge his right over the purchased property. Hence in my considered opinion the proposed defendant is necessary party to the suit to adjudicate the matter. As the result I have proceed to pass the following

ORDER

IA No. VII U/o 1 rule 10(2) R/w Sec.
151 of CPC filed by the plaintiffs is hereby
allowed.

The plaintiffs are hereby permitted to
implead the proposed defendant as
defendant No. 17 in the above suit.

No order as to costs.

(MARIYAPPA)
Addl. Civil Judge & JMFC:
Bangarpet.