

IN THE COURT OF SENIOR CIVIL JUDGE & JMFC, AT:
MALUR

Dated this the 27th day of January 2021

Present: Smt. D. Anupama
B.Com., LL.B.
Senior Civil Judge & JMFC Malur.

O.S.No.37/2014

PLAINTIFF/S : Sharadamma

V/s

DEFENDANT/S : Channamma and another

ORDERS ON IA 16 FILED BY THE PLAINTIFF UNDER
ORDER 1 RULE 10(2) R/W SECTION 151 OF C.P.C

This application is filed by the plaintiff in order to bring the proposed defendants 1 and 2 as defendants 5 and 6 of this case.

2. It is stated in the affidavit that the plaintiff has filed this suit against the defendants for the relief of declaration of title and such other reliefs. The defendant No.2 has illegally entered into a sale transaction with respect to suit schedule property infavour of proposed defendants under an agreement of sale dated: 13.9.2013 and the said fact has not been averred by the defendant No.2 in his written statement and recently in his chief examination he has produced the copy of agreement. The defendant No.1 has no right, title, interest to

execute the registered agreement of sale in favour of proposed defendants by ignoring the rights of the plaintiff over the suit schedule property. The defendant No.2 by colluding with the proposed defendants has illegally entered into an alleged transaction for illegal gain and to harass the plaintiff. The proposed defendants are proper and necessary parties to adjudicate the matter and without arraying them as parties to the present case on hand this suit cannot be adjudicated effectively. If the application is allowed no hardship would be caused to the defendants. Hence he prays to allow the application.

3. On the other hand the counsel for proposed defendant No.1 filed objections by contending that the proposed defendant No.1 is the agreement holder and it is well settled principle of law that agreement is not created any right over the executant. It cannot be considered as an alienation of the property. Hence the proposed defendant No.1 is not at all necessary party to the present case on hand. In order to make him wandering to the court unnecessarily the present application is filed by the plaintiff. On above grounds he prays to dismiss the application.

4. I have heard both sides and perused the case papers.

5. The points that would arise for my consideration are;

1. Whether the plaintiff has made out reasonable grounds to consider the application?

2. What order?

:-REASONS:-

6. **Point No.1:-** This suit is filed by the plaintiff against the defendants for the relief of declaration and permanent injunction with respect to suit schedule property. It is the contention of the plaintiff that the proposed defendants have got entered into an agreement with defendant No.2 with respect to suit schedule property. Hence they are necessary parties to the present case on hand. Since the plaintiff is seeking for the relief of declaration and permanent injunction against the defendants. She has shown the cause of action in the present case on hand. However she has not shown any cause of action against the proposed defendants in order to bring them on record as defendant No.5 and 6. As contended by the counsel for proposed defendant No.1 it is true that just an

agreement of sale would not create any title in favour of executant with respect to property mentioned in the said agreement of sale. Since there is no cause of action shown by the plaintiff against the defendants in order to bring them on record this application deserves to be dismissed. Hence I answer point No.1 in **Negative**.

7. Point No.2 : For the foregoing reasons I proceed to pass the following.

ORDER

**I.A.16 filed by the plaintiff under 1 rule
10(2) R/w Sec. 151 of CPC is hereby dismissed.**

No order as to costs.

(Dictated to Stenographer transcribed by him, corrected and then pronounced by me in the open court, on this the 27th day of January 2021)

**(ANUPAMA.D)
Senior Civil Judge, Malur.**