

OS 12/2019

Learned counsel for the plaintiff has filed his written argument on IA filed U/o 1 Rule 10 of CPC.

Learned counsel for proposed defendant No.5 also advanced his reply arguments.

For orders kept by

Addl.Senior Civil Judge and JMFC,  
K.R.Pete

**ORDERS ON I.A.FILED U/O**  
**1 RULE 10(2) OF CPC.**

This is an application filed by the plaintiff under Order 1 Rule 10(2) of C.P.C., for seeking permission to implead the respondent as defendant No.5.

2. Minor guardian of the plaintiff namely Shwethashri in her affidavit accompanying to this I.A has stated that plaintiff has filed present suit for partition and separate possession against the defendants. The during pending of the suit the 2<sup>nd</sup> defendant had sold out the item No.3 of the suit schedule property in favour of proposed defendant No.5 through registered sale deed dated 17.11.2021 to deprive the rights of the plaintiff over the suit schedule property. Hence, opponent is the necessary party to the present suit to decide the suit

effectively, his presence is very much necessary before this court. Hence, prays for allow the application.

3. Notice on I.A. duly served on proposed defendant No.5. he put his appearance through his advocate Sri. HVB and has filed detailed objection and contended that application filed by the plaintiff is not maintainable either in law or facts. Further he has contended that item No. 3 of the suit schedule property is self acquired property of defendant No.2. The defendant No.2 had acquired the property through registered sale deed dated 17.08.1989. Hence, she had every right to sell the suit schedule property to the proposed defendant No. 5. Hence, plaintiff or any body having no rights over the item No. 3 of the suit schedule property. The plaintiff has falsely shown as joint family property to mislead the this court to get wrong full gain. Hence, application filed by the plaintiff is not maintainable and liable to be dismissed. By contending so, prays for dismiss the application with cost.

4. Learned counsel for the plaintiff has filed his written argument. Learned counsel for the proposed defendant No.5 has advanced his arguments. Perused the documents placed on record.

5. The following points arise for the consideration of this Court;

**1. Whether the plaintiff shows that presence of the respondent before this court is necessary in order to enable the court effectually and completely to adjudicate upon and settled all the questions involved in the present suit?**

**2. What Order?**

6. My findings on the above points are as follows:

Point No.1 : **In the Affirmative**

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

### **REASONS**

7. **Point No.1:-** The plaintiff has filed present suit for partition and separate possession against the defendants.

8. It is the case of the plaintiff that suit schedule properties are the joint family properties. Plaintiff is having his legitimate half share in share of the 3<sup>rd</sup> defendant. Hence, plaintiff has demanded the defendants to effect partition. However, they refused to effect partition. Hence, he has filed present suit for partition and separate possession.

9. It is the contention of the defendants that suit schedule item No.3 of

the properties is self acquired property of defendant No.3. The defendant No.1 and 2 has put a construction in the item No.3 of the property with financial assistance of State Bank of Mysuru. Hence, they pray for dismiss the suit.

10. It is the contention of the proposed defendant No.5 is also that suit schedule item No. 3 of the property is self acquired property of defendant No.2. The learned counsel for the proposed defendant No.5 has furnished copy of the sale deed dated 17.08.1989. Hence, question is that, whether item No.3 of the suit schedule property is self acquired property or not is required full pledged trial. At this stage court can not come to conclusion that suit schedule item No. 3 of the property is self acquired property of defendant No.2 without recording of evidence of the both the parties.

11. Admittedly, defendant No.2 has sold out the property in favour of proposed defendant No.5. Therefore, I am of the opinion that to give findings on the contention of the defendants presence of the proposed defendant No.5 is necessary as purchaser of the property. Therefore, his presence is necessary before this court to pass decree effectively. Hence, presence of the respondent is necessary to ensure that

all matters in dispute are effectively or completely determined. In the absence of the respondent court is unable to pass a decree effectively. Hence, court of the opinion that presence of the respondent is very much necessary in order to enable the court effectually and completely to adjudicate upon and settled all the questions involved in the suit. Accordingly, I answer point No. 1 in the **Affirmative**.

11. **Point No.2:** In view of my above discussions, I proceed to pass the following;

### **ORDER**

*I.A. filed by the plaintiff under Order 1 Rule 10(2) of C.P.C is hereby allowed.*

*The plaintiff is hereby permitted to bring the respondent on record as defendant No. 5 and proceed against him as defendant No.5.*

*The plaintiff is hereby directed to amend the plaint by impleading the respondent as defendant No.5 from the date of 14 days of this order.*

*For amended plaint by 06.06.2025.*

Addl.Senior Civil Judge and JMFC,  
*K.R.Pete*