

KAMD300008572018



ORDER ON IA-IV

Applicant by name Aghaz Ali Beig has filed an application under order 1 rule 10(2) read with section 151 of CPC seeking permission to implead himself as plaintiff No. 6 in the suit.

2. The plaintiffs have not filed any objections. However, the defendants have filed objections.

3. Heard both.

4. Now the point that arise for the consideration of this court is that

“whether the applicant has made out grounds to implead him as plaintiff No.6 in the suit?”

5. On hearing both and perusal of the materials on record, this court answers the above point in the **affirmative** for the following:

REASONS

6. Point No.1: The applicant along with application has filed an affidavit sworn to by him. In the said affidavit, he has contended the plaintiffs have filed a representative suit. He is intending to protect the public property. He being a neighbour of the suit property is having knowledge about the suit property. The claim of the defendants is illegal one. Therefore, he is quit essential to be impleaded as party to the suit. He could not implead at the early stage of the proceedings, as he had personal problem and hence the application has to be allowed.

7. On the other hand, the defendants have contended in the objections that the applicant has sworn to a false affidavit. The defendants also have denied the entire allegation of the affidavit sworn to by the applicant. The applicant had filed a suit against the 1st defendant in O.S. No. 341/2018 on the file of principal Civil judge, Maddur and for relief of permanent injunction. The application filed by the applicant for temporary injunction was dismissed on merits. Thereafter, the applicant filed memo and got dismissed the suit on 22/7/22. The application is filed at highly belated stage. The paper publication was made in

the year 2018. He did not choose to implead himself as party at the earliest point of time. The applicant is not a necessary party in the suit. By colluding with the plaintiffs and in order to drag the proceedings and harass the defendants, the application is filed and hence it is liable to be dismissed.

8. At the out set, it is pertinent to note that there is no dispute that this suit is filed in a representative capacity and property involved according to the plaintiffs is a public property. It is well settled principle that all the persons who are interested in the suit property can be added as parties in the suit as necessary parties. The applicant has specifically stated that he has got interest in the suit property. No doubt, though not in the objections, the defendants have denied the interest of the applicant in the suit property in their oral arguments on the application. But without the trial, it is not possible to ascertain and decide whether he has got interest in the suit properties or not. At this stage there are no such materials to form such opinion.

9. The basic and important contention of the defendants is that the applicant had earlier filed a suit in O.S. No. 341/2018

on the file of the court of Civil Judge. The application filed by him for temporary injunction was dismissed. Therefore, later he got it dismissed as withdrawn. Therefore, his interest in the present suit land is already adjudicated and hence he is not a necessary party. It is also contended by the counsel for the defendants that the applicant, in the suit filed by him he had contended he has purchased the suit property. But in this case, he is contending that it is a public property. His contentions in both the suits are contrary each other. Therefore, on this ground alone the application has to be dismissed. But, it is pertinent to note that suit in O.S. No. 341/2018 the suit property is shown as vacant residential house bearing assessment No.434 and it measures 120 feet east to west and 20 feet north to south. But in this suit, there are three properties shown as ABC. They contain agricultural land, shops and and two plots measuring different measurements. Though, it is contended that the properties of both the suits are one and same, at this initial stage, there are no authenticated documents placed by the parties. It would be burden on the defendants to prove this fact during the trial. Therefore, it is cannot be said that the applicant does not have

any interest in the suit properties or that his interest has been already adjudicated. It is much pertinent to be noted that even for the sake of arguments, it is taken that his stand in the present suit and earlier suit is contrary each other, it is easy for the defendants to expose him during the trial if he is impleaded as party in the suit. The defendants can take all the contentions by way of additional written statement and prove them during the trial.

10. On the other hand, if the application is dismissed at the outright itself, it may not only result in multiplicity of proceedings, but may also results in denial of the opportunity. Even if there is collusion between the plaintiffs and applicant, then also it can be elicited during the trial and applicant can be exposed. If the grounds are made out, the defendants can also claim the compensation for vexatious or frivolous suit. However, the fact that there is delay in making the application cannot be ignored by this court. Because, the applicant except saying that he had personal problem in one line, has not explained what is the personal inconvenience and to what extent it has stopped him from making the application at the early stage of the

OS No.96 of 2018

proceedings. In fact, in the affidavit there is no mention as to when did he get the information about the pendency of this case. Admittedly, the publication has taken place in the year 2018 itself. As such, there is long delay in making application. Therefore, same has to be compensated by way of cost. It is pertinent to note that, except the contention of delay, the defendants have not pleaded what hardship or prejudice would be caused to them if the applicant is impleaded as party in the suit. Therefore, in order to avoid multiplicity of proceedings and put an end to the litigation among the parties, the application has to be allowed. Accordingly, point No.1 is held in the **affirmative** and proceed to pass the following.

ORDER

Application filed by Applicant by name Aghaz Ali Beig under order 1 rule 10(2) read with section 151 of CPC is allowed subject to payment of cost of Rs. 500/- and he is impleaded as plaintiff no.6 in the suit.

OS No.96 of 2018

Call for amendment and amended plaint by 30/6/2023

**Additional SENIOR CIVIL JUDGE &
JMFC MADDUR.**