

**IN THE COURT OF ADDL. CIVIL JUDGE AND JMFC., AT
MALAVALLI**

Present:

***Smt.Aishwarya.Chidanand .Pattanshetti ,B'COM,LL.M,
1st Addl. Civil Judge and J.M.F.C.,at Malavalli***

Dated this the 11TH day of December, 2020

O.S.No.20/2015

Plaintiff :

- 1) Gowramma, W/o late Chowdaiah
Aged about 60 years,
R/o Gundapura village, Halaguru Hobli
Malavalli Taluk, Mandya District.
- 2) Chikkathayamma W/o late Chikkalingegowda
Aged about 46 years,
R/o Girija slum, Mandya Town
Near Factorycircle, Mandya.

(By Shri.MSS. Advocate)

V/s

Defendant :

- 1) Ramesha S/o late Madegowda
Aged about 44 years
R/o Nandipura village,
Halaguru hobli, Malavalli Town.
Now R/o #25/3, Narasamma
layout, Dagaranhalli, Church
road, J.P.Nagar, Bengaluru 78

2) Raju S/o late Madegowda(Dead by Lrs)

2 a)Smt. PuttachanammaW/o late Raju,
Aged about 50 years,

2 b) Smt. Jyothi W/o Shivalingegowda
D/o late Raju, Aged about 32 years,
R/o Puttegowdana Doddi village,
Maradavadi Hobli, Ramanagara Taluk
Bengaluru Rural District

2 c) Sidderaju.N.R, S/o late Raju,
Aged about 30 years,

2 d) Geetha.N.R, D/o late Raju,
Aged about 25 years,
Defendant No.2(a),(c) and (d) are
R/o Nandipura village,
Halaguru hobli, Malavalli Taluk ,
Mandya District.

(By Shri.RP. Advocate)

3) B.Kumara S/o late Buthegowda
Aged about 40 years,

R/o Nandipura Village,Mandya Taluk,
Mandya District.

(By Shri.JR Advocate)

ORDERS ON I.A.No.IV

Applicants : Smt. Shivalingamma and 4 others

V/s

Opponents : Gowramma and another

ORDERS ON IA No.IV

1 This application is filed under Order I Rule 10 of CPC by the applicants No.1 to 5 praying to implead them as proposed defendant No.4 to 8 respectively in this suit as they are the necessary and proper parties to this suit.

2. The application is supported with affidavit of the 3rd applicant N.M.Mahadevu, wherein he has stated that, the plaintiff has filed this suit against the defendant No.1 to 3 for the relief of declaration and permanent injunction in respect of the suit schedule property. It is stated that the suit schedule property belonged the family of Siddegowda and Chowdegowda. Later on the family of Siddegowda and Chowdegowda in 1954 sold Sy No.16/1 measuring 8 guntas to Madegowda S/o Kullegowda. Susequently in 1956 the said Madegowda S/o Kullegowda sold the property to Chowdegowda the adopted son of Siddegowda through a registered sale

deed, and from the date of the sale he is in possession and enjoyment of the said property.

3. The applicants have stated that during the lifetime of Chowdegowda, his movable and immovable properties were divided between his children by name Madegowda, Siddegowda and Buthegowda as the partition deed in 1968 respectively. As the said partition deed this suit schedule property was not given to anybody. It continued as the property of the joint family property of Chowdegowda and his children are Siddegowda, Buthegowda and Madegowda. Amongst these three, Madegowda had passed away few years back and the applicants are his legal heirs. Therefore, the suit schedule property is their ancestral property and joint family property as such the proposed defendants have right to claim share over the same.

4. If the applicants are impleaded as parties in the suit, it will not cause any injustice to the plaintiff or the defendants.

Recently two months back the proposed defendants came to know about the suit filed by the plaintiff against the defendants. If this application is not allowed it cause hardship and irreparable loss which cannot be compensated. Hence, it is prayed to implead them as proposed defendants in this suit.

5. On the other hand, the defendant No.3 has filed detailed objection by stating that the application is not maintainable. The suit is for declaration and permanent injunction and the defendant No.3 has filed a counter claim in the suit. Whereas the applicants cannot seek for their share in this suit if any ,as it will change the nature of the suit,they are not at all concerned with the plaintiff and there is no cause action for the present application, the application is filed only with a malafide intention.

6. Further it is stated that the defendant No.3's father Buthegowda, applicants' father Madegowda and their elder uncle Siddegowda had partitioned the property of

Chowdegowda orally and no partition took place in writing. The suit schedule property through partition came to the defendant No.3's father Buthegowda and into his possession and this fact is known to the applicants.

7. It is for the proposed defendants to file the partition suit to establish their rights and not by way of this application. The proposed defendants are not concerned to this suit in any way and hence, they are not at all necessary parties in this suit. Hence, it is prayed to reject the application.

8. Heard both the sides and perused the documents.

9. Now the points that arise for my consideration are:

1) Whether the applicants/proposed defendants proves that I.A No.1V filed under Order 1 Rule 10 of CPC deserves to be allowed at this stage?

2) What order?

10. My findings on the above points are as under;

Point No.1 : In the Negative

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

REASONS

11. POINT NO.1:- Perused the entire records, instant application with affidavit and objections filed by the party and also arguments canvassed by the learned advocates for the parties. It is pertinent to note that the plaintiff, defendant No.1 and Lrs of defendant No.2 have not filed objections to the present application. This is the suit is one for Declaration and permanent injunction against the defendant No.1 to 3. When, additional issues were framed on the application of defendant No.3,as he had filed a counter claim in this suit then the present application came to be filed by the proposed Defendants and opposed by the defendant No.3.

12. The question as to whether an individual is a proper or necessary party to a suit would depend upon the nature of relief claimed in the suit. There is no hard and fast rule can be weighed, that would cover a possible situation in this regard. As per Order 1 Rule 10(2) of CPC, 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.

13. Admittedly this is the suit is one for declaration and permanent injunction. A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for complete and final decision on the question involved in the proceeding. The plaintiff have prayed for the relief of declaration that plaintiff No.1 and 2 are the lawful owner in peaceful possession of the suit schedule

property. The plaintiffs have also prayed to declare the sale deed 18.7.2007 executed by the defendant No.1 and 2 in favour of defendant No.3 is not binding on the plaintiffs and it is void ab initio.

14. Further the plaintiffs have prayed for the relief of permanent injunction restraining the defendant No.3, his agents or anybody acting on his behalf from illegally trespassing with the peaceful possession and enjoyment of the plaintiffs over the suit schedule property. The proposed defendants are not directly concerned with the subject matter of the suit as their claim is totally different. More over the plaintiff is the dominus litis and he can't be forced to add parties against whom he does not want to proceed in the suit.

15. In this case if the persons are added the issues involved in the suit for declaration and permanent injunction would be enlarged as already the defendant No.3 has put forth a counter

claim, and the proposed defendants claiming share over the suit schedule property cannot be impleaded as necessary and proper parties to the suit.

16. In Kasturi vs Uyyamperumal and others (2005)6 SCC 733, the Hon'ble Apex Court provided two tests that are to be satisfied for determining the question that who amounts to a necessary party:

(i) there must be a right to some relief against such party in respect of the controversies involved in the proceedings,

(ii) no effective decree can be passed in the absence of such party.

Addition of parties should not be made merely to avoid multiplicity of suits if their presence is not necessary for determining the real question. The ratio held in the above said decision is aptly applicable to this case.

17. Taking into consideration of the entire material circumstances, instant application and objections and

arguments canvassed by the learned advocates for the parties, this Court has impediment in arriving into the conclusion that the applicants have not made out just ground to consider their request and I.A. filed under Order 1 Rule 10 of CPC, deserves to be rejected at this stage. Hence, **I answer the Point No.1 in the Negative.**

18. **Point No.2:** In view of my findings given to the Point No.1 at the aforesaid manner, the applicants are not entitled for the relief as prayed for. In the result, I proceed to pass the following:-

-: O R D E R :-

I.A.No.IV filed by the applicants/proposed defendants U/Order 1 Rule 10 of CPC is hereby rejected with cost of Rs. 250/-.

***1st Addl.Civil Judge and JMFC
Malavalli***

