

KAMD720004852012



**IN THE COURT OF THE PRL.CIVIL JUDGE AND JMFC AT
SRIRANGAPATNA.**

Dated this 4th day of January, 2025.

**Present : Sri. HARISHKUMAR. M, B.Com. LLB.
Prl.Civil Judge and JMFC., Srirangapatna.**

O. S. NO. 348/2012

PLAINT CAUSE TITLE

PLAINTIFF:

Sri. Venkatesha
S/o Thimmegowda @ Yalavappa,
Age: 50 years, Occ: Agril.
R/o Pampinahosahalli Village,
Belagoal Hobli,
Srirangapatna Taluk,
Mandya District.
(Rep. by Sri. B.S.A., Advocate)

- Versus -

DEFENDANTS:

1. Smt. Puttalingamma,
W/o Thimmegowda @ Mogappa,
Age : 70 years,
2. Sri. Chaluvaraju,
S/o Thimmegowda @ Mogappa,
Age : 40 years,
3. Sri. Mahadevu
S/o Thimmegowda @ Mogappa,
Age : 45 years,
4. Sri. Puttaswamy,
S/o Thimmegowda @ Mogappa,
Age : 35 years,



5. Sri. Krishananda
S/o Thimmegowda @ Bundegowda,
Age : 50 years,
6. Sri. Maadu,
S/o Thimmegowda @ Bundegowda,
Age : 45 years,
D1- to 6 are R/o
Pampinahosahalli Village,
Belagola Hobli,
Srirangapatna Taluk.
7. Smt. Channamma,
W/o Kariyappa,
Age: 75 years,
8. Sri. Mahadeva
S/o Kariyappa,
Age: 45 years,
9. Sri. Suresha,
S/o Kariyappa,
Age: 50 years,
10. Sri. Krishna,
S/o Kariyappa,
Age: 40 years,
D.7 to 10 are
R/o No.2440,
4th main,
4th cross,Paduvarahalli,
Vinayakanagara, Mysuru.

**(D.1 & 2 placed exparte vide order
dated:04.01.2013)**

(D.3 R/by Sri. C. R. S., - Advocate)

(D.5 & 6 R/by Sri. P. S. N., - Advocate)

**(D.7, 8, 9 & 10 R/by Sri. B. S. S., -
Advocate)**



I.A No. 8 CAUSE TITLE.

APPLICANT/PLAINTIFF:

Sri. Venkatesha
S/o Thimmegowda @ Yalavappa,
Age: 50 years, Occ: Agril.
R/o Pampinahosahalli Village,
Belagoal Hobli,
Srirangapatna Taluk,
Mandya District.

- Versus -

OPPONENTS/DEFENDANTS:

Smt. Puttalingamma,
W/o Thimmegowda @ Mogappa,
Age : 70 years,
R/o Pampinahosahalli Village,
Belagola Hobli,
Srirangapatna Taluk.

And others...

1	Provision under which the application is filed	Under order VI Rule 17 read with sec.151 of CPC
2	Relief sought for	Amendment of plaint.
3	The date on which the application is filed	24.10.2024.
4	Number of the application	8
5	The date on which the objections are filed by different opponents	11.11.2024.
6	The date on which the orders were passed on the said application	04.01.2025.



ORDER ON IA NO.8 UNDER ORDER VI RULE 17 READ WITH SECTION 151 OF CIVIL PROCEDURE CODE FILED BY THE PLAINTIFF.

1. The plaintiff herein filed application under order VI Rule 17 read with sec.151 of Code of Civil Procedure seeking to amend the plaint by way of deletion of defendant No.7 to 10 in the present suit.
2. The plaintiff herein filed this suit for declaration, consequential relief of possession and mesne profits against the defendants
3. On the other hand the defendant No.7 to 10 have filed objections to IA No.8.
4. Heard arguments of both sides and perused records.
5. The points that arise for consideration of this court are as follows.

1. Whether the applicant/plaintiff has made out grounds to allow the IA No. 8?

2. What order?

6. Findings of this Court on these points is as follows:

Point No. 1 : In the Negative.

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

REASONS

7. **Point No.1:-** It is a matter of record that the plaintiff herein filed this suit for the relief of declaration, consequential relief



of possession and mesne profits and such other reliefs against the defendants based on the fact that, he is the owner of the suit schedule 'A' property and he has acquired the same by way of partition. This being the facts the defendants have encroached the suit schedule 'B' and 'C' property, hence he filed this suit.

8. The IA No.8 filed by the plaintiff seeking to amend the plaint by way of deletion of defendant No.7 to 10 in the present suit. The IA No.8 sworn by the plaintiff and it is stated that, the court commissioner has submitted that the defendant No.7 to 10 have not encroached the suit schedule property hence the plaintiff herein seeking to delete the defendant No.7 to 10 in the present suit.
9. At this stage it is to be noted that, the IA No.8 is filed for the relief of amendment of plaint, but the plaintiff ought to have filed application under order 1 Rule 10 of CPC. Mere mentioned in the wrong provision is not a ground to dismiss the present application.
10. On the other hand the Counsel for the defendant No.7 to 10 has filed objections to IA No.8 and contended that the IA No.8 is not maintainable either in law or on facts. The counsel for the defendant No.7 to 10 further contended that the suit filed in the year 2012 and the simply the plaintiff has arrayed the defendant No.7 to 10 with an intention to harass them.



Moreover the defendant No.7 to 10 have taken contention that they have not encroached the property of the plaintiff, hence the application is not maintainable and prays to dismiss the IA No.8.

11. The learned counsels appearing for parties have addressed their respective arguments and reiterated the facts mentioned in the IA No. 8 and objections to IA No. 8.

12. At this stage it is relevant to refer the provision of Order VI Rule 17 of Civil Procedure Code as hereunder:

Order VI Rule 17. Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

13. This Court carefully gone through the proposed amendment sought by the plaintiff herein and it reveals that, it is in the nature of deletion of defendant No.7 to 10. The plaintiff herein averred that, the defendant No.7 to 10 have not encroached the suit schedule property and the same has been submitted



in the court commissioner report. On perusal of proposed amendment, the nature of amendment will prejudice the interest of the parties because the defendant No. 8 to 10 filed written statement and the issue No. 3 has been framed that “ whether the defendant No.8 to 10 proves that their father has purchased the property bearing Sy.No.521/1P2 as contended in para 7 of their written statement?”.Hence it shows that the present suit there are rival claiming by the both the parties. Under such circumstances the presence of defendant No.7 to 10 are necessary for effective adjudication of this case.

14. At this stage It is pertinent to mention that it is necessary to extract the provisions of Order 1 Rule 10 (2) of code of civil procedure, while adjudication the said IA No. 8.

The order 1 rule 10 (2) says as follows:

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 question involved in the suit be added.”

15. In this regard the Hon'ble Apex Court observed that in AIR



1958 SC 886, “The question of addition of parties under Rule 10 is one of judicial discretions, which has to be exercised in view of the facts and circumstances of a particular case. In some cases, it may rise controversy as to the power of court in contra distinction too its inherent jurisdiction or, in other words, of jurisdiction in the limited sense in its use under section 155.” And also observed that, “Order 1 rule 10 provides for addition of proper or necessary parties and the striking out of improper or unnecessary parties. A person may be added as a party whether as plaintiffs or as defendant when he ought to have been joined as a party or when his presence is necessary in order to dispose of the suit completely and effectively, the words ought to have been joined in sub-rule (2) apparently refers to necessary parties in the sense that the suit cannot be effectively disposed of without their presence in record”.

16. In other words the purpose of this provision is to bring before the court, at the same time, all the persons interested in the dispute so that the dispute may be finally determined at the same time in the presence of all the parties without the delay, inconvenience and expense of several actions and trials and inconclusive adjudication. This provision, thus, confers wide discretion on the court to meet with every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on record. Addition of parties is, however, a judicial discretion which is required to be exercised



judiciously. The provisions of Rule 10(2) of order 1 confer very wide powers on the court regarding joining of parties. Such powers have to be exercised on sound judicial principles keeping in mind all the facts and circumstances of the case. Two consideration especially will have to be kept in mind before exercising powers, namely (i) the plaintiff is a dominus litis. He is the best judge of his interest. It is, for him to choose his opponent from whom he claims relief and, normally, the court should not compel him to fight against a person whom he does not want to fight and from whom he claims no relief: and (ii) if the court is satisfied that the presence of a particular person is necessary to effectively and completely adjudicate all the disputes between the parties, irrespective of the wishes of the plaintiff, the court may exercise the power and join a person as party to the suit.

17. The power may be exercised by the court at any stage of the proceedings either upon an application of the parties or even *suo-motu* (of its own motion) and on such terms and conditions as may appear to the court to be just.
18. In the case of Anil kumar V.s Shivanath considering the provisions of order 1 rule 10 (2) the Hon'ble Supreme Court observed that, “ Though the court may have power to strike out the name of a party improperly joined or add a party either on application or without application of either party, but the condition precedent is that the court must be satisfied that the presence of such party to be added, would be necessary in



order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit. The object of the rule is to bring on record all the persons who are parties to the dispute relating to the subject-matter so that the dispute may be determined in their presence at the same time without any protraction, inconvenience and to avoid multiplicity of proceedings.

19. Thus, if a special statute makes a person a necessary party to the proceeding and also provides that non-joinder there of will result in dismissal of the petition, the court cannot use the curative powers of order 1 rule 10 as to avoid consequences of non-joinder of such party. The test is not whether the plaintiff agrees or objects to the addition of the party to the suit, but whether presence of such party is required for full and complete adjudication of the dispute.

20. Suffice it to say that in the leading case of Razia V. Sahebzandi anwar begum, the Hon'ble Supreme Court has laid down the following principles regarding the power of the court to add the parties under rule 10(2) of the Code."

That the question of addition of parties under Rule 10 of Order 1 of the Code of Civil Procedure, is generally not one of initial jurisdiction of the court, but of a judicial discretion which has to be exercised in view of all facts and circumstances of a particular case. But in some cases, it may raise controversies as to the power of the court, in contradistinction to its inherent jurisdiction, or in other words, of jurisdiction in the limited sense in which it is used in section 115 of the code.

That in a suit relating to property, in order that a person may be added



as a party, he should have a direct interest as distinguished from a commercial interest in the subject-matter of the litigation.

Where the subject-matter of a litigation is a declaration as regards status or legal character, the rule of present or direct interest may be relaxed in a suitable case where the court is of the opinion that by adding that party, it would be in a better position effectually and completely to adjudicate upon the controversy; (and)

The cases contemplated in the last proposition have to be determined in accordance with the statutory provisions of sections 42 and 43 of the Specific Relief Act.

21. But the party cannot be added so as to introduce a new cause of action or to, alter the nature of the suit. The power can be exercised by the Court at the stage of trial and that, too without prejudice to the said party's plea of limitation. It cannot be said that, the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effects. It is necessary that the person must be directly or legally interested in the action, in the answer. The Court is also authorised to strike out any party improperly joined either as a plaintiff or as a defendant in a suit.

22. In the instant case the plaintiff stated that, the defendant No. 7 to 10 have not encroached the suit schedule property, hence they may be deleted in the present. The suit is filed in the year 2012 and both parties have concluded their evidence now the matter is posted for arguments at this stage the IA No.8 filed for deletion of defendant No..7 to 10 .



23. In the instant case admittedly the plaintiff seeking relief against the defendant No.7 to 10. As could be seen from the allegation made in the plaint, the question involved in the suit is also attracted as against the defendant No. 7 to 10. The plaintiff brought the suit against the defendants for the relief of declaration, consequential possession and mesne profits and such other reliefs. If the plaintiff fails to prove his case, the suit may be dismissed. If any relief is granted to the plaintiff against the defendants, such relief would prejudice the defendant No. 7 to 10, in this suit. In these circumstances this Court is of the opinion that the defendant No. 7 to 10 are the necessary party in the present suit. Hence they cannot be deleted as alleged by the plaintiff.

24. The next question that arises for consideration is whether the defendant No. 7 to 10 are proper party and their presence is necessary before the Court to enable it to give relief to the plaintiff against the defendants. As already stated, the disputes between the plaintiff and the defendants are whether the plaintiff is the owner and in possession of the suit schedule 'A' property and there is an encroachment made by the defendants as alleged in the plaint. These questions cannot be decided effectually and completely without the presence of the defendant No. 7 to 10. So this court is of the view that the defendant No. 7 to 10 are also a 'proper' party to the present litigation. Based on the above observation, the applicant/plaintiff has not made out grounds to allow the



IA. No. 8 and hence, the application filed by the applicant/plaintiff is deserves to be dismissed. Hence this court answers point No.1 in the Negative.

25. **Point No.2:-** For the reasons stated in the point No.1, this Court proceed to pass following:-

ORDER

Interlocutory Application No. 8 filed by the plaintiff under Order VI Rule 17 read with Section 151 of Civil Procedure Code is hereby dismissed.

No order as to cost in view of the facts and circumstances of the case.

(Typed by me directly on the computer, corrected by me, signed by me and then pronounced by me in open court on this 4th day of January, 2025).

**Prl. Civil Judge & JMFC,
Srirangapatna.**

ORDER ON I.A.8

O.S. No.348/2012

