

KAMS010045782020



**IN THE COURT OF THE II ADDITIONAL DISTRICT
AND SESSIONS JUDGE, MYSURU**

Dated this the 23rd day of April, 2024

:: PRESENT ::

Sri S.T. Devaraja, B.Sc., LL.B.,
II Addl. District & Sessions Judge,
Mysuru.

MA/38/2020

APPELLANT :

Smt.Ambika
W/o Suresh,
Aged about 35 years,
R/at Door No.83,
Dodda Ramamandira Road,
Behind Durga Devi Temple,
Nazarbad Mohalla,
Mysuru.
(By Sri. T.P.K.ADV.,)

-Vs-

RESPONDENTS:

1. Zonal Commissioner,
Zonal Office No.6,
Mysuru City Corporation,
New Sheshadri Iyer Road,
Mandimohalla,
Mysuru.
2. The Commissioner,
Mysuru City Corporation,
New Sayyajiri Rao Road,

Mysuru.
(By Sri.C.N.M.Adv.,)

**APPLICANTS/
PROPOSED
RESPONDENTS**

1. Sri.P.Subramanya,
S/o Late K.Puttaiah,
Aged about 77 years,
2. Sri.S.Sreyash,
S/o P.Subramanya,
Aged about 42 years,

Both are R/at D.No.365/5,
Durga Devi Temple Road,
Nazarbad Mohalla,
Mysuru.
(By Sri.R.S.A.,Adv.,)

ORDER ON I.A.

Stage:- Hearing on I.A.

Vide I.A. dated 22.01.2021 under Order 1 Rule 10(2) of CPC., the Applicants /Proposed Respondents prayed to implead them as Additional Respondents. In support of the application, the Applicant No.1 - Sri.P.Subramanya has sworn to an affidavit and referred to Regd., Partition Deed dated 20.07.1970, accordingly contended as per the Partition Deed 'C' schedule property fallen to his share and open space is also exclusively and absolutely belonging to him and thereafter the khata and other relevant documents transferred in his name.

2. The Applicants have also referred the relevant portion of the Regd., Partition Deed dated 20.07.1970 and also referred to the Regd., Sale Deed dated

14.01.2020 as well as the Regd., Will dated 10.01.2012 executed by one Smt.Jayamma. It is the contention of the Applicants, the entire construction work carried on by the Appellant is in utter violation of law as she has indulged in illegal and unauthorized construction and the same has to be curtailed from the hands of the Court.

3. It is the contention of the Applicants, in view of the construction constrained to lodge the complaint before the Respondent No.1 on 06.07.2020 who in turn issued notice dated 09.07.2020. The Applicants have also referred to for having approached the Police with a complaint on 13.07.2020 and also referred the pendency of O.S.No.490/2020. It is the contention of the Applicants, inspite of notices issued by the concerned authority that the Appellant proceeded with the illegal construction day by day, hence it has become just and necessary to implead as Additional Respondents as they are the necessary and proper parties. With all other grounds, the Applicants prayed to allow the application.

4. The Appellant has filed a detailed objection and referred the proceedings of O.S.No.490/2020 which is pending for consideration and also referred the proceedings in M.A.No.58/2020 on the file of the learned Senior Civil Judge and C.J.M., Mysuru which is also pending for consideration in respect of the interim order of status-quo. It is the objection, it is only an attempt of the Applicants without any resemblance in the Appeal due to reason that they have already filed a suit for the

relief for comprehensive nature and as such the Applicants are not the proper and necessary parties.

5. It is the objection, she has preferred the Appeal on the Final Notice passed by the Respondent i.e., the MCC, Mysuru, hence there is no necessity of the Applicants to come on record. It is the objection, in view of the complaint of the Applicant No.1 the Respondent has caused unnecessary notice, hence she constrained to prefer the Appeal on the Final Notice passed by the Respondent which is an independent Authority and the Applicants are not proper and necessary parties due to the reason that the Applicants have already filed original suit, hence the question of impleading as Additional Respondents does not arise and the application does not survive for consideration. With all other grounds, the Appellant prayed to dismiss the application.

6. Heard. Perused the entire record.

7. The only Point that would arise for my consideration is :

POINT

1. Whether the I.A. filed by the Applicants under Order 1 Rule 10(2) of CPC., deserves to be allowed ?

2. What Order ?

8. My findings on the above Point is as here under:

Point No.1 : **Affirmative**

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

:: REASONS ::

9. **Point No.1 :-** The learned Advocate for the Applicants has filed a detailed written arguments and reiterated the contents of the application without any difference and also referred to Order 1 Rule 10(2) of CPC., and retyped the provision. It is the contents of the written arguments, the Applicants are necessary and proper parties even though the Appellant has challenged the Final Notice issued by the MCC., Mysuru for the simple reason that the Appellant has encroached the property of the Applicants and doing illegal construction and directly affect the right and interest of the Applicants.

10. It is the contents of the written arguments, the presence of the Applicants is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the case on hand. In support of the submission, the learned Advocate for the Applicants has referred a decision reported in; 1997(7) SC 210 in the case of Sarvinder Singh Vs. Dalip Singh and others. With all other grounds, the learned Advocate for the Applicants prayed to allow the application.

11. The learned Advocate for the Appellant has disputed the grounds urged in the affidavit filed in support of the application and contended in view of the pendency of the comprehensive suit in O.S.No.490/2020 the Applicants are not necessarily to be impleaded as Additional Respondents. By referring to the contents of the objection, it was the submission that the Appellant has sought the relief only against the MCC., Mysuru and against the Final Notice dated 07.10.2020 issued by the Respondent No.1. It was the submission, the Applicants can agitate their grievances in O.S.No.490/2020, hence they are not just and proper parties to the Appeal on hand. With all other grounds, the learned Advocate for the Appellant prayed to dismiss the application.

12. On consideration of the materials available on record, the Appellant by name Smt.Ambika has preferred the Appeal under Section 443 of the Karnataka Municipal Corporation Act., against the Zonal Commissioner and the Commissioner, MCC, Mysuru and prayed to set aside the Final Notice dated 07.10.2020 issued by the Respondent No.1 as the same is illegal without proper enquiry as contemplated under the provisions of the Act and to allow the Appeal.

13. It is forthcoming from the record, on the complaint of the Applicant No.1 that the Respondent No.1 has initiated the proceedings under the provisions of the Karnataka Municipal Corporation Act and issued Final Notice dated 07.10.2020. It is also forthcoming from the

record about the institution and pendency of O.S.No.490/2020 filed by the Applicants against the Appellant and sought for the relief of declaration to declare the Applicant No.1 is the absolute owner of encroached portion which is denoted with the letters C D E J H I C mentioned in the sketch attached to the plaint, the relief of mandatory injunction and consequential relief of permanent injunction in respect of the schedule property. The said suit is resisted by the Appellant herein and thereby there is dispute with regard to the extent as well as the right, title, interest and possession of the same.

14. It is the contention of the Applicants for proper adjudication of the Appeal their presence is very much necessary as on the complaint of the Applicant No.1 the Respondents have initiated the proceeding under the Act. Even by taking into consideration of objection of the Appellant, this Court is of the opinion, in the event of allowing the application certainly the Appellant will not be put to any type of injustice as the Appellant has got every right and opportunity to substantiate the claim questioning the Final Notice dated 07.10.2020 issued by the Respondent No.1.

15. This Court is also of the opinion, in the event of rejecting the application, certainly the Applicants will be put to injustice as they have no right to defend the Appeal on hand. It is made clear, the proceeding in O.S.No.490/2020 being separate and independent

proceeding even in the said suit the parties to the proceeding can agitate their right. In view of the said fact, there is no impediment to allow the application under consideration. Hence, I answer Point No.1 in the **Affirmative.**

16. **Point No.2:-** In the result, I proceed to pass the following;

ORDER

The I.A. filed by the Applicants under Order 1 Rule 10(2) of CPC., is hereby **ALLOWED.**

The Appellant to carry out necessary amendment and to file the amended Appeal memo by 02.08.2024.

[Dictated to the Stenographer, transcribed & computerized by him, transcript revised, corrected and then pronounced by him in the open Court on this the **23rd day of April, 2024**].

[S.T. DEVARAJA]
II Addl. District & Sessions Judge,
Mysuru.

