

Order on I.A No.XXIV

The application I.A.No.XXIV is filed by the defendant No.3 U/O 9 Rule 7 of CPC praying for an order to set aside the exparte order passed against her.

2. The said application is supported by affidavit of defendant No.3 and it is sworn that the plaintiffs have filed suit against defendants for the relief of declaration and permanent injunction. It is further sworn that the defendant No.3 did not receive summons from this court since she was not residing at Nachanahalli Palya which is shown as address in the plaint. It is also stated that recently the defendant No.3 through her father came to know about the filing of present suit. It is also sworn that the defendant No.3 got good grounds to proceed with case. Hence prayed to allow the application.

3. The counsel for plaintiff has filed objection to the application and it is stated that the plaintiffs have filed suit against the defendant No.3 by name Ameena D/o Abdulla and not Ameena D/o Maqbul. The application has been filed by the applicant who is not the daughter of Abdulla. The application filed by Ameena D/o Maqbul is different from defendant No.3 and hence the application is not maintainable. Hence prayed to dismiss the application.

4. Heard the arguments of counsel for both parties.

5. The counsel for defendant No.3 has filed present application to set aside the exparte order passed against defendant No.3. It is stated in the affidavit accompanying to the application that the summons was not served to the defendant No.3 and she came to know about the filing of present suit through her father by name Maqbul. On perusal of the averments made in the plaint, the plaintiffs have filed suit against defendants for the relief of declaration and permanent injunction on the basis of the Sale Deed dated 10.08.2012 executed by defendant No.1 to 4. On perusal of the plaint averments the plaintiffs have stated the name of defendant No.3 as Ameena D/o Abdulla but now the defendant No.3 who filed the present application as stated that her name is is Ameena D/o Maqbul and Late.Bilal. It is the objection of the plaintiffs that the Applicant who filed the present application is different from defendant No.3 mentioned in the plaint and therefore the application should be rejected. On the other hand it is the contention of the Applicant that her father's name is Maqbul and not Abdulla but the father of the plaintiffs No.2 to 4 got created the Sale Deed from some fictitious persons. It is also sworn that the presence of defendant No.3 is very much necessary to defend the case. By considering the reasons stated in affidavit, the defendant No.3 should be permitted to contest the suit by setting aside by the exparte order passed against defendant No.3. The fact that the father's name of defendant No.3 is Maqbul or Abdulla could be determined only after appearance of defendant No.3. Therefore it is necessary to consider the present application filed by the defendant No.3. Hence this court proceeds to pass the following:

O R D E R

**The application I.A.No.XXIV filed
by the defendant No.3 U/O 9 Rule 7
of CPC is hereby allowed.**

**The exparte order passed against
the defendant No.3 is hereby set
aside.**

**Senior Civil Judge & J.M.F.C
H.D.Kote**

Order on I.A.No.XXV

The application I.A.No.XXV is filed by the Applicant U/O 1 Rule 10(2) of CPC to implead him as necessary party to the suit.

2. The application is supported by affidavit of the Applicant and it is sworn that the plaintiffs have filed suit against defendants for the relief of declaration and permanent injunction. During pendency of the suit, the wife of present Applicant by name Bilal was died on 12.09.2019 by leaving behind the Applicant as her legal heir. It is also sworn that the plaintiffs have not made the Applicant as necessary party even though he is also legal heir of deceased Bilal. It is also sworn that the Applicant came to know about the filing of present suit through defendant No.12 and therefore he filed the present application to implead him as party to the suit. Hence prayed to allow the application.

3. The counsel for plaintiffs filed objection to the application and it is stated that during pendency of the suit, defendant No.1 was dead and her legal heirs were already on record as defendant No.2 to 4. It is stated that the proposed defendant is not the husband of defendant No.1 and the name of husband the defendant No.1 is Abdulla who is already on record. The proposed defendant is a stranger to defendant No.1 and hence prayed to dismiss the application.

4. Heard the arguments of counsel for Applicant and plaintiffs.

5. The Applicant has filed present application to implead his as party to the present suit as additional defendant. On perusal of the affidavit sworn by Applicant, it is stated that he is husband of deceased Bilal who is defendant No.1 and therefore he should be impleaded as necessary party. On the other hand the plaintiffs have taken up the contention that the husband's name of defendant No.1 is Abdulla who is already on record. On careful perusal of the pleadings of parties available on record, the contesting defendants have raised the plea that fictitious persons who are defendants No.1 to 4 have executed the alleged Sale Deed in favour of father of defendant No.2 to 4. Now the Applicant has come up before the court with contention that he is the husband of said Bilal who is dead during pendency of the suit. Along with the application, the Applicant has produced some relevant documents before the court which includes the mutation extract in M.R.No.3/2005-06, election identity card of one Fathima, Form-2 submitted before Taluk Thashildar by one Bilal, income and caste certificate relating to one Fathima, application given by one Anwar S/o Dasthagir for issuance of living

member certificate, copy of death certificate of one Fathima W/o Maqbul and also produced the family genealogy certificate issued by Deputy Thashildar, Kasaba Hobli, Mysur Taluk relating to one Maqbul. By producing the said documents Applicant intends establish that he is the husband of one Bilal against whom the plaintiffs have filed suit. On the other hand the plaintiffs have specifically contended that the husband name of said Bilal is Abdulla. The Applicant by producing some prima faice documents before the court has established that he is the husband of one Bilal who has been made party as defendant No.1 in the present suit. The fact that the husband of deceased Bilal is either Abdulla or Maqbul could be determined only after the trial. By considering the documents produced by the Applicant in order to determine actual relationship of said Bilal along with the present Applicant, he should be impleaded as party to the suit. When the contesting defendants have raised the specific plea that some fictitious persons have executed the alleged Sale Deed in favour of father of plaintiffs No.2 to 4 and in order to determine the actual fact, the present Applicant is a necessary party to the suit. If the Applicant is implead as party to the suit, no hardship caused to the plaintiffs and on the other hand the truth will come out that the Applicant is the husband of deceased Bilal or Abdul as mentioned by plaintiffs in the plaint is the husband of deceased Bilal. In order to determine all the said aspects, the Applicant is the necessary party to the suit. Hence this court proceeds to pass the following:

O R D E R

The application I.A.No.XXV filed by the Applicant U/O 1 Rule 10(2) of CPC is hereby allowed.

The Applicant is hereby permitted to come on record as additional defendant No.21.

The plaintiffs are hereby directed to implead the Applicant as defendant No.21 and carryout necessary amendment.

For amendment and amended plaint.

Call on : 22.03.2025.

(Dictated to the Stenographer, transcribed by him on computer, revised, corrected and then pronounced by me in the open Court on this the 15th day of March,2025)

**Senior Civil Judge & J.M.F.C
H.D.Kote**