

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND J.M.F.C.,
H.D.KOTE**

Present: NATARAJ YADAV .S, M.B.A., LL.B.,
Senior Civil Judge & J.M.F.C.,
H.D.Kote

Dated, this the 11th day of January, 2023

O.S.No. 97/2022

Plaintiff/s : Sanndevamma
W/o Late. Bairanayaka,
Aged about 61 years,
R/at Hebalaguppe Village,
Kasaba Hobli,
H.D.Kote Talluk, Mysuru District.
(By Sh. G.N.Narayanagowda, Advocate)

-V/s-

Defendant/s : 1. Javarayanayaka
S/o Late. Channanayaka,
Aged about 74 years,
2. Chikkamanamma
W/o Late. Javarayanayaka,
Aged about 70 years,
3. Chandramma
W/o Late. Javarayanayaka,
Aged about 37 years,
4. Mahadevanayaka
S/o Late. Javarayanayaka,
Aged about 35 years,
5. Kavya
W/o Mahadevanayaka
Aged about 25 years,

6. Kenchamma
W/o Sannanayaka,
Aged about 75 years,

7. Puttamma
W/o Chikkanayaka,
Aged about 71 years,

D1 to 7 are R/at Hebbalaguppe Village,
Kasaba Hobli, H.D.Kote Taluk, Mysuru
District.

8. Chikkadevamma
W/o Ramanayaka.N,
Aged about 47 years,
R/at Itna Village, Kasaba Hobli,
H.D.Kote Taluk.

(D1 to 5 & 8 by Sh. T.G.Shashidhara.,
Advocate,D6 & 7 by Sh. D.Chandrappa.,
Advocate,)

PARTIES TO I.A.IV

Applicant : Sanndevamma

-V/S-

Opponent/Plaintiff : Javarayanayaka

ORDER ON I.A.NO.IV

1. Vide this order I shall dispose of an application under order 1 Rule 10(2) of CPC moved on behalf of the applicants to implead the proposed defendants as defendants No.9 and 10 in the present case.

2. The facts giving rise to filing of this application is that the property in suit was the ancestral property of defendants including the proposed defendants. Since the proposed defendants have share in the suit property, this application has been filed for their impleadment in the array of the defendants.

3. The application has not been contested by the proposed defendants.

4. It is submitted by Mr.G.Nararyan Gowda, learned counsel for the applicant that since the interest of the proposed defendant in the immoveable property is jeopardized because of the execution of the impugned agreement to sell by the defendants in favor of the plaintiff, to which they have also right, therefore, they are necessary and proper party to the present suit.

5. The question that needs to be decided in this application is whether in a suit for specific performance of a contract for sale of a property, instituted by a purchaser against the vendor, a stranger or a third party to the contract claiming to have an independent title and possession over the contracted property, is entitled to be added as a party/defendant in the said suit and since the proposed respondents are not the parties to the agreement, they are neither necessary nor proper party to the present suit, and an effective decree can be passed in their absence as relief claimed by the plaintiff in the suit cannot be claimed against the proposed defendants.

6. Order 1 Rule 10 sub-rule (2) CPC reads as follows:-

"(2) 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 questions involved in the suit, be added."

7. Thus, by virtue of the above said provision of law, the court at any stage of the proceedings can order either upon or without the application of either party and on such terms as may appear to the court to be just to add the name of a person whether as plaintiff or defendant, if the court is of the view that the presence of such persons before the court is necessary in order to enable it to effectively and completely adjudicate upon and settle all the questions involved in the suit.

8. Plaintiff has filed a suit for specific performance of agreement to sell executed by the defendants in his favour. The defendants had agreed to sell the suit property to the plaintiff claiming themselves to be the absolute owner, occupier and in peaceful physical possession of the same.

9. The proposed defendants are strangers to the impugned agreement to sell. The question of jurisdiction of the court to invoke order 1 Rule 10 CPC to add person who has not been made a party in the suit by the plaintiff, not arise unless the party proposes to be added, has direct legal interest in the dispute involved in the suit. A person can be legally interested in the answers to the controversies only if he can satisfy the court that it may lead to a result that will affect him legally. In a suit for specific performance, the court has to see that plaintiff has a right to claim the relief as claimed in the suit as against the proposed defendants relating to the same subject matter i.e. the agreement

to sell. The issue which is involved in a suit for specific performance, which needs to be adjudicated upon by the court is the enforceability of the contract entered into between the purchase and the vendor for sale of the contracted property and whether the vendor was ready and willing to perform its part of contract and whether the purchaser under the circumstances of the case is entitled to a decree of specific performance for a contract of sale against the vendor.

10. The proposed defendants are no parties to the contract and they based their claim on independent title of the contracted property. Therefore, if the applicant is allowed or is added or impleaded in the suit as defendants, the scope of the said specific performance of the contract for sale would be enlarged from the suit for specific performance to a suit for title and possession, which is not permissible in law. Such addition of their names would lead to a complicated litigation and the court would have to go into the trial and decision of serious questions, which would be totally outside the purview of the suit and would also unnecessary prolong the adjudication of the case, as addition of such like persons in the array of defendants could continue without a final decision of the suit.

11. The proposed defendants under the circumstances, being the stranger to the contract, cannot be allowed to be added so as to change the nature of suit from specific performance to a suit of different character, may be suit for title and possession. What is important for the court to look into the present suit is lis between the parties and the court is not empowered to decide if the applicant has acquired any title in the contracted property because, that is not the germane for just decision of this case i.e. for specific performance of the contract for sale.

12. A decree for specific performance of the contract for sale as passed would not affect the right, title or interest of the proposed defendants in respect of the contracted property. Therefore, the proposed defendants are neither necessary nor proper party to be added in the present suit.

13. The proposed defendants not being a party to the agreement to sell cannot be a party to a suit for specific performance of the contract for sale. A decree if passed in this suit would not be binding on them

14. Hence, I find no merits in the application and the same is liable to be dismissed. Accordingly, I proceed to pass the following;

ORDER

IA.No. IV filed by the applicant under Order 1 Rule 10 (2) read with section 151 of Civil Procedure Code is hereby dismissed with costs.

Put up for P/E on 30.01.2023.

(Dictated to the Stenographer on computer, typed by him, revised, corrected and then pronounced by me in the open Court on this the 11th day of January 2023.)

(NATARAJ YADAV .S)
Senior Civil Judge & J.M.F.C
H.D.Kote