

ORDERS ON I. A. No.IV

The plaintiff has filed the present I.A. No.IV under Order I Rule 10(2) r/w 151 of CPC seeking permission to implead (1) Smt. Nethravathi W/o Eranaika, (2) Smt. Shivamma W/o Varadanaika, (3) Sri. Rangegowda S/o late Venkategowda, and (4) Sri. J.Manikantaswamy S/o late J.Javaranaika, as proposed defendant No.6 to 9 in the present suit.

2. The plaintiff has filed an affidavit in support of I.A No.IV wherein it is stated that, she has filed this suit against the defendants seeking the relief of partition and separate possession in the suit schedule properties. But recently she came to know that during the trial of the suit, the defendant No.4 and his family members have sold the portion of item No.2 property to the proposed defendant Smt. Nethravath W/o Eranaika and Smt. Shivamma W/o Varadanaika under the registered sale deed dated 18.11.2019, and in favour of Sri. Rangegowda S/o late Venkategowda under the registered sale deed dated 23.12.2019. Similarly the 5th defendant has executed registered gift deed dated 27.02.2015 in respect of the portion of suit item No.2 property. Hence, the proposed defendants are necessary parties to the suit, without their presence the suit is not maintainable. If the application is not allowed, the plaintiff will be put to untold hardship and great prejudice will be caused

to the plaintiff and the valuable right of plaintiff will be jeopardized. On the other hand, no hardship will be caused to the defendants. Hence, prayed to allow the application.

3. The IA., notice was issued to the proposed defendants. Sri.SSB, Advocate filed vakalath for proposed defendant No.6 to 9. They have filed objections to IA No.IV contending that, application is not maintainable either in law or on facts. The execution of above said sale deeds are partly admitted, whereas the proposed defendants have purchased the suit property after verifying all documents pertaining to the Sy. No.123/3 to the extent of 12 guntas for bonafide consideration. Hence, they are the bonafide purchaser. At the time of purchase, they have no knowledge about the existence of present suit. The 5th defendant has executed registered gift deed in favour of proposed defendant No.9 dated 27.02.2015 in respect of Sy. No.123 measuring 1 acres, but since the proposed defendant No.9 has executed registered gift deed in favour of 5th defendant on 07.04.2022, at present the proposed 9th defendant has no property in his name, hence he is not a proper party to the suit. Since the proposed defendant No.6 & 7 are bonafide purchasers, they have every right over the purchased property, since from 18.11.2019 these proposed defendants are in lawful possession over the said properties as absolute owners. Hence, prays to dismiss the application.

4. Heard the arguments from both sides.

5. The point that would arise for my consideration is:

"Whether the proposed defendant No.6 to 9 are just and necessary or proper parties to the suit as prayed for?"

6. The above point is answered in the **affirmative**, for the following :

REASONS

7. The suit is filed for the relief of partition and separate possession. In the affidavit it is pleaded that, after filing the suit, 4th defendant and his family members have sold the portion of item No.2 property to the proposed defendant No.6 & 7 under the registered sale deed dated 18.11.2019, and in favour of proposed defendant No.8 under the registered sale deed dated 23.12.2019. Similarly the 5th defendant has executed registered gift deed dated 27.02.2015 in respect of the portion of suit item No.2 property in favour of proposed 9th defendant. Hence, the proposed defendants have to be impleaded. Hence, present application is filed to implead them as proposed defendant No.6 to 9. The presence of the proposed defendant No.6 to 9 may be necessary and effectually and completely to adjudicate upon the settle all the questions involved in the partition suit and in order to avoid the multiplicity of the proceedings.

8. In this view of the matter, during the pendency of the suit, it appears that the

presence of the proposed defendant No.6 to 9 may be just and necessary. Otherwise, it will lead to multiplicity of proceedings and no irreparable injury will be caused to the other side, if the application is allowed. Hence, the proposed defendant No.6 to 9 would be impleaded in this suit. Accordingly point for consideration is answered in the **Affirmative**. Hence, the following:

ORDER

IA No.IV filed under Order I Rule 10(2) r/w 151 of CPC is hereby allowed.

(1) Smt. Nethravathi W/o Eranaika,
(2) Smt. Shivamma W/o Varadanaika,
(3) Sri. Rangegowda S/o late Venkategowda, and (4) Sri. J.Manikantaswamy S/o late J.Javaranaika, are impleaded as proposed defendant No.6 to 9 in the suit.

The plaintiff is hereby directed to amend the plaint accordingly.

For amendment of plaint and amended copy by: 23.01.2024

Addl. Civil Judge & JMFC.,
Heggadadevanakote.