

KAMS300001242023



**THE COURT OF THE PRL. SENIOR CIVIL
JUDGE AND J.M.F.C., HUNSUR.**

Present: **Smt. Zaibunnisa, B.Com., LL.B.,**
Prl. Senior Civil Judge & J.M.F.C.,
Hunsur.

Dated, this the 31st day of July 2024

O.S.NO16/2023

Plaintiffs : Akkayamma and others

V/s

Defendants: Maramma and others

I.A. No. VIII

Applicant : Smt.Gowramma W/o Shivegowda
Aged about 60 years,
R/at Mudalakoppalu Village,
Bannikuppe Post, Kasaba Hobli,
Hunsur Taluk, Mysuru District.

V/s

Opponent : Akkayamma and others

ORDERS ON IA NO.VIII FILED U/O 1 RULE 10(2) R/w
151 of CPC

The present application is filed by applicant/Gowramma
W/o Shivegowda U/O 1 Rule 10(2) of CPC seeking to implead
her as defendant No.5.

2. It is asserted in the accompanying affidavit to the application that the suit is filed by the plaintiffs against the defendants seeking partition and separate possession of their shares in the suit properties. The said case is set down for examination of plaintiffs. The defendant No.2, Rajegowda, his wife and their children for their legal necessity i.e., to pay off their antecedent debts also for their agricultural activities and household expenses, have agreed to sell the suit schedule item No.6 property measuring 1 acre 39 guntas in Sy.No.115/7, New Sy.No.115 situated at Madahalli Village, Kasaba Hobli, Hunsur Taluk for a consideration amount of Rs.3,05,000/- and they have received advance sale consideration amount of Rs.3,00,000/- and executed sale agreement on 15.06.2018 in her favour and in the presence of witnesses. As per the conditions of the said deed the defendant No.2 and his family members failed to execute the registered sale deed in her favour. Hence, she has filed a suit for specific performance of contract against the said defendant No.2 and his wife and their children in OS No. 159/2021 before the Addl. Civil Judge, Hunsur. The said suit is pending for trial. Such being the facts the plaintiffs have filed the suit including the above said property with a malafide

intention thought the said property is the self acquired property of defendant No.2. The plaintiffs and defendants colluded with each other and filed this false suit. If the court does not permit her to come on record as a party the plaintiffs and defendants would obtain the decree in collusion with each other. Hence, it is necessary party to permit her to implead as defendant No.5. Hence, the application.

3. The application is opposed by plaintiff No.1 through the objection wherein she has contended that the application is neither maintainable in the eye of law nor on the basis of the fact. The applicant filed a false application and the averments in the affidavit are all false, concocted and created for the purpose of filing this application. The applicant has not made out any grounds to allow the application. The suit filed by the plaintiffs against the defendants for the relief of partition and separate possession with respect to schedule properties and the plaintiffs and defendants are coparceners and dispute pending between the joint family members to decide whether the properties are available for partition. Applicant is not a coparcener and also there is no absolute conveyance of title

transferred in favour of applicant with respect to item No.6 of the suit schedule properties. The plaintiffs and defendant No.1, 3 and 4 are not parties to the above alleged sale agreement. The applicant has no locus standi to proceed in this suit as a interested party. The application is filed only with an intention to drag on the proceedings and to give unnecessary trouble to the plaintiffs. Hence, the application is liable to be dismissed in limine.

4. In the back ground of above contentions I have heard the learned counsel for the parties and perused the materials on record.

5. Now the points that arise for my consideration are;

1. Whether the applicant has made out grounds to implead herself in the suit as defendant No.5?

2. What order?

6. Basing upon the facts and circumstance and the materials available on record my finding to the above points are as under:

Point No.1 :- Affirmative

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

REASONS

7. **Point No.1:-** Referring to the material available on record it is very clear that the suit is filed by the plaintiffs against the defendants for partition and separate possession of their specific shares in the suit schedule properties item No.1 to 10 by metes and bounds. When the matter was stood for plaintiffs' evidence this applicant came before the court with the present application seeking to implead her as defendant No.5 on the grounds that the defendant No.2 and his wife and children have agreed to sell the suit schedule item No.6 in favour of this applicant for a valuable consideration and also received an advance sale consideration amount of Rs. 3,00,000/-. But later this defendant No.2 failed to comply the conditions of her sale agreement dated 15-6-2018. Therefore, she has filed a suit for the relief of specific performance of contract against the defendant No.2 and his wife and children in OS No.159/2021 on the file of Addl. Civil Judge and JMFC Hunsur. According, to this applicant the plaintiffs and defendants colluded with each other and filed the suit in order to deprive her right over the suit schedule item No.6 property. Hence, she filed the application.

8. Per contra, the defendant No.1 filed her objection and submitted that in this suit for partition with respect to suit schedule properties between the plaintiffs and defendants are co-parceners and this applicant is not the family member and the dispute pending between the parties here is to know whether the suit properties are available for partition or not. Therefore, the applicant is not a co-parcener and also no absolute conveyance of title is transferred in her favour with respect to suit item No. 6. Therefore, the application is not maintainable.

9. In support of her application applicant/proposed defendant No.5 has furnished few records pertaining to her suit that filed for specific performance of contract in OS No. 159/2021. The said documents also includes a judgment dated 24.6.2024 which is passed in the suit filed by the applicant in OS No.159/2021. According to the said judgment the suit of the applicant is decreed in her favour and the defendants of that suit i.e., the defendant No.2 herein and his wife and children are directed to execute the registered sale deed with respect to the suit schedule property. The said suit

was not contested by this defendant No.2 and his side no evidence was produced. According, to the applicant the above mentioned property bearing Sy.N. 115/7 measuring 1 acre 39 guntas of Madahalli Village is the self acquired property of this defendant No.2 and being absolute owner. This defendant No.2 has executed a sale agreement along with his family members in favour of the plaintiff/the present applicant. On going through the RTCs that available on record pertaining to suit item No.6 discloses that the said property is standing in the name of this defendant No.2 under MR No. 24/2003-04 dated 6-3-2004 as per column No.10. The column No.7 of same RTC shows that the said property is come under saguvali No.534/9 dt: 14-06-95. Therefore, the said aspects needs full fledged trial and admittedly no defendants have appeared before this court to challenge the case of the plaintiffs. Hence, in view of the judgment passed in favour of applicant at this stage, I am of the opinion that, if the applicant is permitted to come on record and to contest the suit as defendant No.5 the truth will come out and it will be helpful to the court to decide the matter fully and finally on merits. Further, to avoid the multiplicity of proceedings, it is necessary to allow the application and to permit the applicant

to implead herself as defendant No.5. Therefore, I answer the point No.1 in the affirmative.

10. **Point No.2:** In view of the reason assigned, I proceed to pass the following;

O R D E R

The application filed under Order 1 Rule 10(2) of CPC by the applicant is hereby allowed.

Accordingly, the applicant is permitted to implead herself as defendant No.5 and to proceed with the matter.

No order as to cost.

Prl. Senior Civil Judge & J.M.F.C.,
Hunsur.