

KAMS410000692022



IN THE COURT OF ADDL. CIVIL JUDGE & JMFC.,
KRISHNARAJANAGAR

PRESENT

Smt. Gayatri. B.Com., LL.M. (IPR)

Addl. Civil Judge & JMFC, Krishnarajanagara.

DATED 29TH DAY OF OCTOBER 2022

O.S. No.20/2022

PLAINTIFF : Shilpa W/o Harish H.A.

-V/s-

DEFENDANT : Bommaiah @ Devaraju,
S/o late Appanna,
aged about 36 years,
R/at Hampapura village,
K.R.Nagar taluk, Mysuru district.

IN I.A. No. IV

APPLICANT/
Proposed D-2 Lakshamma W/o late Appanna,
aged about 70 years,
R/at Hampapura village,
K.R.Nagar taluk, Mysuru district.

-V/s-

OPPONENT/PLAINTIFF : Shilpa W/o Harish H.E,
aged about 38 years,
R/at Hampapura village,

K.R.Nagar taluk,
Mysuru district.

ORDER ON I.A. NO.IV FILED U/O 1 R-10[2] OF C.P.C

The present application U/O. 1 R-10[2] of C.P.C. has been filed by the proposed defendant no.2 praying this court to permit her to come on record as necessary party to proceed with the matter in the interest of justice and equity.

2. Per contra, learned counsel for plaintiff has filed objections to said I.A, contending that no reasons has been pleaded in her affidavit. She is not a necessary party to the present suit, but she is a 3rd party. The 3rd party affidavit filed in respect of present I.A. by her is against U/Sec. 4 of the Indian Oaths act,. Hence, prayed for dismissal of I.A, in the interest of justice and equity.

3. Heard and perused.

4. The following points arise for this court's consideration.

1) Whether the applicant has made out sufficient grounds to allow the present application?

2) What order?

5. This court findings on the above points for consideration are as under:

Point No.1 : In the **Affirmative**

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

REASONS

6. POINT NO.1:

The present application has been filed by the proposed defendant no.2 praying this court to permit her to come on record as a defendant to proceed with the matter as she is a proper and necessary party for the proper adjudication of the present case. It is her contention that, the suit of the plaintiff is not maintainable as respondent/plaintiff do not have any right, title and interest over the plaint schedule property. She has denied the ownership of the plaintiff over the plaint schedule property. She has also denied the fact of execution of registered gift deeds. It is her grievance that the respondent/ plaintiff has constructed a compound by encroaching the land belonging to her, as such it is she who is aggrieved party, but in-spite of respondent/plaintiff showing her towards the southern side boundary of the suit schedule property she has not been made party in the present suit. Learned counsel for proposed defendant no.2 has drawn the notice of this court towards the boundaries of the suit schedule property stating that towards southern side plaintiff has mentioned boundary as land belonging to the plaintiff and thereafter defendant's house. It is the specific contention of the proposed defendant no.2 that

name of this defendant has not been mentioned towards the southern boundary. If the litigation has been continued in her absence it leads to multiplicity of proceedings, such being the fact she has come up with the present application. As per Order 1 Rule 10[2] of CPC,

“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. Hence, such being the position of law, this court without further discussion, finds it just and proper to allow the present application and to accord opportunity to proposed defendant no.2 to appear on record to proceed with the matter so as to protect her right and interest in respect of schedule property, such being the opinion of this court, this court without further discussion, proceeds to answer these points accordingly.

8. POINT NO.2:

In view of the above discussions and the reasons mentioned therein this court proceeds to pass the following:-

ORDER

I.A. No.4 filed U/O. 1 Rule 10[2] of C.P.C. is hereby allowed with cost.

The proposed 2nd defendant is permitted to come on record and proceed with the matter. Counsel for plaintiff is to cause necessary amendment in plaint cause title to bring proposed 2nd defendant on record to proceed with the matter.

For amendment and amended plaint, call on 14.11.2022.

[Dictated to the Steno, transcribed by her. Corrected and then pronounced by me in the Open Court on this the 29st day of October 2022]

(Gayatri)
Addl. Civil Judge & JMFC.,
K.R.Nagar.