

KAMS500001812021



**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC
NANJANGUD**

Present : **Sri. Kamalaksha D., B.A., LL.B.,**
Senior Civil Judge & J.M.F.C.,
Nanjangud.

Dated this the 27th day of June 2024

O.S./41/2021

Plaintiffs: K.M.Mahadevegowda and others

-V/s-

Defendants: Mahadevegowda and others

I.A.IX

- Applicants**
1. Chandramma W/o late Ramanna,
aged about 60 years,
 2. Parashiva S/o late Ramanna,
aged about 37 years,
 3. Rajamma D/o late Ramanna,
aged about 35 years,

4. Savitha W/o late Chikkanna,
aged about 50 years,
5. Chinnaswamy S/o late Kulappa,
aged about 60 years,

All are residing at
Malkundi Village,
Hullahalli Hobli,
Nanjangud Taluk.

(By Smt.Ashwini R., Adv.)

-V/s-

Opponents : K.M.Mahadevegowda and others

(Sri. H.P.Shankar Adv.)

ORDERS ON I.A. IX UNDER ORDER I
RULE 10 R/W SECTION 151 CPC

The proposed five defendants filed the application on the above said provision to implead them as necessary parties i.e., the defendants on the ground that the schedule item No.2 in Sy.No.16 measuring 5 acres 15 guntas out of which 3 acres situated at Kaggalur Village, Hullahalli Hobli, Nanjangud Taluk originally belonged to Dasashetty. He sold Sy.No.16 measuring 5 acres 15 guntas to the

Karigowda S/o Giddegowda on 11.11.1932. The said Karigowda sold 3 acres to the Dhyavagowda S/o Bettashetty out of 5 acres 15 guntas in Sy.No.16 on 13.12.1945 through registered sale deed. The said Dhyavagowda sold the above said property to the father of the proposed defendants i.e., Kullappa through a registered sale deed dated 27.06.1968. On the basis of sale deed the father of the proposed defendants came in possession of property of Sy.No.16 measuring 3 acres as absolute owner. The father of the proposed defendants i.e., Kullappa died about 45 years back and after the death, his legal heirs came in possession of schedule property.

2. It is further explained that the plaintiffs deliberately missed out proposed defendants from the litigation though he knowing their role as purchaser of property Sy.No.16. It is also mentioned that adjudication of suit without their impleading will not amount effective adjudication forever.

3. Per contra, plaintiffs filed objections stating that the averments made in the application are totally away from truth and incorrect to be believed as true facts. The averments made in the application about the purchase of property of Sy.No.16 by Dyavagowda S/o Bettashetty is totally away from truth. The proposed defendants/ applicants have not furnished any document to show their right and possession over item No.2 schedule property. Hence, they prayed to reject the application.

4. The defendant No.1 also filed objections and prayed to reject the application mentioning that the false averments and facts have been made in the application. The application is filed only to prolong the trial of the matter and also mentioned that the proposed applicants have not produced any documents to show how they came in possession of schedule property and what is their role to decide in the matter. Hence, the 1st defendant also prays to reject the application.

5. Heard. Perused pleadings and materials placed on record. The points that arise for consideration are:

1. Whether the proposed applicants have made out ground to implead them as necessary parties i.e., defendants in the suit?
2. What order ?

6. The above points are answered as follows :-

Point No.1 : In the negative

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

REASONS

7. **Point No.1:-** The purpose of Order I Rule 10 C.P.C. is, to implead a party in a civil litigation if they are missed out from such litigation either as plaintiff or defendant. Now question arise before this court that whether the proposed defendants may be allowed to come on record as defendants. The contention of the proposed defendants that, the original owner of the property i.e., Dasashetty sold the property to one Karigowda in the year 1932; Karigowda sold the property to the Dhyavagowda in the

year 1945; and the said Dhyavagowda sold the property to the father of the proposed defendant No.5 in the year 1968. After the death of the Dhyavagowda the defendants became the owner or inherited the purchased property. Finally now the proposed defendants or applicants claim to be in possession of item No.2 of suit schedule property. As rightly submitted by the counsel for the plaintiffs and the 1st defendant, the applicants/proposed defendants made weak attempt to implead them as parties, because they have not produced any document like sale deed, R.T.C. or any other revenue documents atleast to show the fact of purchase of item No.2 property. In such situation, it is not proper to implead the applicants as defendants in the suit because if the proposed defendants failed to produce any documents at this level or on subsequent dates, their presence in the suit will not give any effective consequences for adjudication. The plaintiffs being the claimants of the share from the schedule property, may know the real situation and background of family affairs including nature of schedule property mentioned in the

suit. Suppose the proposed defendants are necessary parties, the plaintiffs could have chance to bring the suit in the name of proposed defendants also. Mere allowing application of proposed defendants to come on record would not enlarge the scope of suit and chance of proposed defendants to challenge the suit in the absence of solid documents i.e., sale deed, R.T.C. or any other revenue documents. The proposed defendants would be allowed to come on record upon the specific term to produce necessary documents, otherwise their presence in the suit will not give any consequences either to the plaintiffs or proposed defendants to prove any fact. Therefore, it may be said that the fact set up by the applicants in the application is not sufficient to allow their application by that way to implead them as parties. Hence, point No.1 is answered in the negative.

8. **Point No.2:-** In view of the findings on the above point, this Court proceeds to pass the following:

ORDER

I.A.IX filed by the applicants/proposed defendants under Order I Rule 10 r/w Section 151 C.P.C. is rejected.

No order as to cost.

(Dictated to the stenographer, transcribed by her on computer, revised, corrected and then pronounced by me in open Court on this the 27th day of June 2024).

(Kamalaksha D.)
Senior Civil Judge & J.M.F.C.,
Nanjangud.