

ORDER

The plaintiff has filed I.A.No.II u/Order I Rule 10 R/w/Section 151 of C.P.C. to add Sub-Inspector of Police, Rural P.S., Nanjanagudu as one of the defendant to the suit.

The plaintiff has filed this suit against the defendant No.1 to 3 for the relief of declaration and consequential relief of injunction in respect of suit schedule property.

In the annexed memorandum of facts, it is stated that, the plaintiff has requested the opponent/P.S.I., Rural P.S. to stop the illegal interference of the defendants and to give protection to the plaintiffs. But the opponent instead of giving protection to the plaintiff, he is helping the defendants. Hence, he is necessary party to the suit in order to avoid multiplicity of proceedings.

It is pertinent to note that, in this suit, there is no order directing the opponent/ police to render assistance to the plaintiff. Further, it is well settled that, the police should not interfere in the civil matter that too, when the matter is pending before the court.

The plaintiff in her application stated that, in spite of her requests, the opponent has not given protection and is helping the defendants. Admittedly, the opponent is public servant. There is no allegation against the opponent that, he is denying the title of the plaintiff or interfering with the possession and enjoyment of the plaintiff over the suit property. Only because he did not heed to the request of the plaintiff, he cannot be made as a party to the present suit. As per Order I Rule 10 of C.P.C., the substitution or addition of parties may be made only when it is necessary for the determination of the real matter in dispute. Under Order I Rule 10 of C.P.C., a person may be added as a party to a suit in the following 2 cases.

- i. when he ought to have been joined as plaintiff or defendant and is not so joined, or
- ii. when, without his presence, the question in the suit cannot be completely decided.

Except, in above 2 cases, there is no jurisdiction to add a party in any other case. Apart from that, a person may be added as a defendant to a suit, though no relief may be claimed against him, provided his presence is necessary for a complete and final decision of the questions involved in the suit. Such a person is called a 'proper party' as distinguished from a necessary party. A person may not be a necessary party and yet he may be a proper party.

But, in this suit, as I said earlier, the opponent is neither necessary nor proper party. Only because, the opponent did not heed to the request of the plaintiff, he cannot be made as a party to the suit.

Learned counsel for plaintiff vehemently argued that, I.A.No.II cannot be disposed off in threshold stage, court requires to issue notice to the opponent. No law prescribes that, when an application filed u/Order I Rule 10 of C.P.C., court is required to issue notice to the opponent first and then only pass an order. When prima-facie the application filed by the plaintiff appears to be not maintainable, in such situation, the issuance of notice to the opponent does not arise at all. As I said earlier, there is no ground to issue notice to the opponent. If notice is issued, it will amount to sheer abuse of process of law. The plaintiff by filing the present application intend to bend the opponent. Hence, the submission of learned counsel for plaintiff is not sustainable. The plaintiff has not made out any grounds to issue notice to the opponent. These type of applications cannot be entertained and the said applications need to be

rejected at threshold stage. Hence, I.A.No.II filed by the plaintiff deserves to be dismissed at the threshold stage. Hence, I proceed to pass the following:

ORDER

I.A.No.II filed by the plaintiff u/Order I Rule 10 R/w/Section 151 of C.P.C. is hereby **dismissed with cost of Rs.100/-**.

In view of orders passed on I.A.No.II, I.A.No.III filed by the plaintiff u/Section 80 of C.P.C. stands disposed off as not sustainable.

*I Addl. Civil Judge & JMFC.,
Nanjangudu*