

KAMS600001762022



O.S./18/2022

IN THE COURT OF THE SENIOR CIVIL JUDGE
AT PERIYAPATNA.

Present

Sri.A.SAMIULLA

B.Sc., LL.B.,

**Senior Civil Judge,
Periyapatna.**

Dated: 22nd Day of May 2023

OS.No.18 of 2022

Smt.Puttamma.

..... Plaintiff

V/s

Smt.Nagamma & Anr.

..... Defendants

IA.No.5

Smt.Puttamma.

.... Applicant/Plaintiff

V/s

3. Smt.Nagaveni w/o Pradeep Kumar,
aged 28 years,

4. Sri.M.Praveen Kumar s/o Mahadev,
aged 30 years,
both are r/at Basalapura village,
Ravandur Hobli, Periyaptana Taluk.

5. Sri.Marigowda s/o Late Thammegowda,
r/at Bhoganahalli village,
Ravandur hobli, Periyapatana Taluk.

.... Opponent/ proposed D3 to 5

ORDER ON IA-5; u/O 1 RULE 10 (2)

R/w Sec.151 OF CPC;

Plaintiff moved this application seeking to implead the opponents as defendants-3 to 5 in the suit.

2. Notice on application was issued. Notice of proposed defendant-3 returned as refused. Notice of proposed defendant-5 duly served and he remained absent. Learned advocate Sri.HNS represents proposed defendant-4 and resisted the application by filing objection statements.

3. Heard arguments.

4. Following point arises for consideration.

Whether the opponents/proposed defendants-3 to 5 are necessary and proper parties and their presence is warranted for the complete and effective adjudication of real controversy between the parties to lis?

5. Answer to the above point is in ***affirmative*** for the following;

REASONS

6. At the outset; suit is filed for specific performance of contract by asserting that; the defendants being the owner of suit properties have agreed to sell the same for a consideration of Rs.14 lakhs and by receiving advance sale consideration of Rs.12 lakhs have executed sale agreement dated 26.04.19 agreeing to execute the sale deed within two years but failed to do so. Hence, suit is filed.

7. Defendants resisted the suit by filing written statement denying plaint averments. They contended that; the plaintiff and his son Mahadevu are money lenders; defendants have availed loan of Rs.5 lakhs from them in part by part for interest at the rate of 5% per month. For the security of said amount they have taken four signed blank cheques and

subsequently they have obtained suit agreement for the security of loan amount. They never intended to sell the suit properties. Hence, they prayed to dismiss the suit.

8. After exchange of pleadings and settlement of issues matter was set down for trial. At this stage the plaintiff filed the application at hand for the relief stated *supra* by stating that; after execution of sale agreement in favour of plaintiff, the defendants herein colluding with the proposed defendants-3 & 4 have entered into registered partition deed in respect of suit properties and proposed defendant-3 illegally sold portion of suit properties in favour of proposed defendant-5; said transactions are not binding on the plaintiff. In this background the proposed defendants are necessary parties to the suit.

9. Proposed defendant-4 objected the application

by contending that; suit properties are ancestral properties of himself and defendants-1 & 2. He along with defendants-1 & 2, his paternal junior uncle and grand mother entered into registered partition deed dated 25.07.18, wherein suit properties are jointly allotted towards the share of defendants-1 & 2 and himself (proposed D4). On the basis of division MR.No.1/18-19 was mutated. On 01.01.21 the defendants-1 & 2 and proposed defendant-4 effected partition through registered partition deed, wherein the lands in Sy.No.73/3 (6Gs) and Sy.No.74/4 (4Gs) were allotted towards the share of defendant-2 whereas lands in Sy.No.73/3 (14Gs) and Sy.No.74/4 (12Gs) were allotted towards the share of proposed defendant-4. At the time of alleged sale agreement the suit properties were in the joint names of defendants-1 & 2 and proposed defendant-4. Said

sale agreement was executed for security purpose. He is not a necessary party to the suit. Hence, he prayed to reject the application.

10. It is worth to note that; a necessary party is one, in whose absence the Court cannot pass an effective decree at all. Proper party is one, whose presence before the Court is necessary to ensure that all matters in dispute are effectually or completely determined. The only reason which makes it necessary to make a person party to action is that he should be bound by the ensuing result and the question should be settled in the suit. In the light of settled principles let us analyze the factual situation at hand.

11. It is pertinent to note that; here, suit is filed for specific performance of contract dated 26.04.19. Defendants filed the written statement, wherein they

admit their ownership and they admit that they got the suit properties under registered partition deed dated 25.07.18. But they have not stated anything about another registered partition deed dated 01.01.21. Plaintiff filed the present application stating that after execution of sale agreement the defendants colluding with proposed defendants have made transactions in respect of suit properties, which are not binding on her, as such they are necessary parties in the suit.

12. It is argued that; in a suit for specific performance of contract the only parties to suit are the persons between whom the contract is entered; proposed defendant-4 is not a party to contract, as such he is not a necessary party to suit and the application is liable to be dismissed.

13. It is true the suit for specific performance of

contract lies only between the parties to contract; but here, proposed defendants entered into transactions after sale agreement in question said to have been executed by the defendants in favour of plaintiff; in this background their presence is warranted, as they are necessary parties to suit for complete and effective adjudication of lis.

14. In addition to above the proposed defendants are proper and necessary parties to suit because their legal rights will be affected if they are not added as parties. If the matter is proceeded in their absence it will be against to the principles of natural justice and in case if order goes against them they will be subjected to great hardship. If they are not impleaded it will result in the multiplicity of proceedings. To avoid multiplicity of proceedings also the presence of proposed defendants is necessary.

Thus, in the light of discussion *supra* above point is answered in affirmative & proceeds to pass the following;

ORDER

IA.No.5 filed u/O 1 Rule 10 r/w Section 151 of CPC filed by the plaintiff is allowed.

Opponents are arrayed as defendants-3 to 5.

No order as to costs.

(Dictated to the Stenographer on laptop, directly typed by her, corrected and initialed by me and then pronounced in the open Court on 22.05.23).

sd/-

(A.Samiulla)
Senior Civil Judge,
Periyapatna.