

KAMS600012232022



O.S./72/2022

IN THE COURT OF THE SENIOR CIVIL JUDGE
AT PERIYAPATNA.

Present

Sri.A.SAMIULLA

B.Sc., LL.B.,

Senior Civil Judge

Periyapatna.

Dated: 10th Day of February 2023

OS.No.72 of 2022

PLAINTIFFS:

Sri.Kallesha & anr.

V/s

DEFENDANT:

Sri.Krishnegowda.

IA.No.2

Applicant/Plaintiff-1:

Sri.Kallesha.

V/s

Opponent/Defendanant

Sri.Krishnegowda

Opponents/proposed defendant-2:

Smt.Kumari w/o Late Prasanna,

Aged 35 years, Occ: Agriculture

r/at NDG Koppalu village,

Bettadapura Hobli, Periyapatna Taluk.

ORDER ON IA-2; u/O 1 RULE 10 OF CPC;

Plaintiffs moved this application seeking to implead the opponent as defendant-2 in the suit.

2. Notice on application was issued. In spite of service of notice opponent remained absent.

3. Heard arguments.

4. Following point arises for consideration.

Whether the opponent is a necessary or proper party to the suit and her presence is warranted for the complete 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 declaration of title; for perpetual injunction & to rectify revenue records by asserting that; their father purchased suit properties under a sale deed dated 10.04.68 and his name was mutated under MR.No.4/78-79. When such being the fact; defendant fraudulently got mutated his name and

thereby denied their (plaintiffs) title over the suit properties. Hence, suit is filed.

7. Defendant marks his appearance through learned counsel Sri.BN but failed to file written statement. When the matter is set down for plaintiffs evidence; they (plaintiffs) filed the application at hand for the relief stated *supra* by stating that; the defendant has executed gift deed dated 23.05.22 in favour of opponent in respect of suit item-2, as such the opponent is a necessary party to the suit.

8. 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.

9. In the light of settled principles let us analyze the factual matrix at hand to ascertain whether the presence of opponent is warranted or not.

10. Here, plaintiffs filed suit for declaration of title over the suit properties. Defendant-2 executed gift deed in respect of suit item-2 in favour of his daughter-in-law i.e., opponent.

11. Facts at hand depict that; proposed defendant-2 is a necessary party to the proceedings. Her presence is necessary for the effective adjudication of lis. Hence, above point is answered in affirmative and proceeds to pass the following;

ORDER

IA.No.2; under Order 1 Rule 10 r/w Section
151 of CPC filed by the plaintiffs is allowed.

Opponent is arrayed as defendant-2 in the suit.

To carry out amendment and to supply
amended plaint.

No order as costs.

(Dictated to the Stenographer on laptop, directly typed by her,
corrected and initialed by me and then pronounced in the open court on
10.02.23).

sd/-

(A.SAMIULLA)
Senior Civil Judge,
Periyapatna.