



**IN THE COURT OF THE ADDL.CIVIL JUDGE AND  
JMFC., AT PERIYAPATNA**

Present: **Smt. Shwetha.J. B.Com, L.L.B.,**  
Addl. Civil Judge & JMFC.,

Dated: this 29<sup>th</sup> day of September 2023

**O.S.No.307/2016**

PLAINTIFFS : SRI.M.D.PURUSHOTHAMA  
AND OTHERS

**V/s.,**  
DEFENDANTS : SRI.RUDRAMURTHY  
AND OTHERS

**IA.No.VII**

APPLICANT/  
DEFENDANT NO.2 : SRI. JAGADISH.B.R  
AND OTHERS  
[By Sri.BNH.,Adv.,]

**V/s.,**  
OPPONENT/  
PLAINTIFF : SRI.M.D.PURUSHOTHAMA  
AND OTHERS  
[By Sri.CPM.Adv.,]

**ORDERS ON I.A.No.VII**

At the stage of cross-examination of PW.1, the  
proposed defendant Nos.2 and 3 have filed the present

application u/O 1 Rule 10(2) of CPC to implead themselves in this case as defendants.

**2.** In the accompanying affidavit, it was mentioned to the effect that the present suit is filed by the plaintiff against the defendant No.1 for the relief of specific performance. The plaintiff by misusing the alcoholic habit of the defendant No.1 succeeded to get the signature of the defendant No.1 to the alleged sale agreement pertaining to the suit property, however the property described in the plaint schedule is the ancestral property, they have joint absolute right and in the joint possession along with the defendant No.1. The plaintiff with an ulterior motive has filed the present suit without making them as parties and are very much necessary to the suit for proper adjudication of the suit. Hence, prayed to allow the application.

**3.** On the other hand, the plaintiff has filed the objections stating that the application is not

maintainable. This suit is filed for specific performance only against the defendant as he alone has executed the Sale Agreement and he is the only necessary party to the suit and the proposed defendants are not necessary party to the suit. The proposed defendants with an intention to harass the plaintiff have colluded with the present defendant and filed false application. That in order to drag the proceedings, the present application is filed. Hence, prayed to dismiss the application.

4. Heard both sides and perused the materials available on record.

5. The points that arise for my consideration are:

*1. Whether the proposed defendants have made out grounds to allow the present application?*

*2. What order?*

6. My findings to the above points are hereunder;

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

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

### **REASONS**

**7. Point No.1:** This suit is filed by the plaintiff for Specific Performance of Contract. It is the pleading of the plaintiff that on 14.09.2011 the defendant has executed the registered Sale Agreement in his favour in respect of suit property, thereafter the defendant did not come forward to execute the Sale Deed. As the attempts made by the plaintiff becomes futile, therefore filed the present suit. On the other hand, the defendant has filed his written statement stating that he had obtained loan from the plaintiff and the plaintiff in turn demanded to execute some document for security for the amount borrowed. Similar suit filed by the plaintiff in OS No.203/2014 against him, but in the said suit, he has appeared and not filed written statement and the plaintiff obtained exparte decree. Moreover the suit property is the ancestral property of defendant and he alone cannot execute the registered sale agreement in favour of the plaintiff. The plaintiff with an intention to

grab the valuable property has filed the present suit with ulterior motive.

**8.** After the rival pleadings, the issues were framed and PW.1 was examined. When the case posted for cross-examination of PW.1, the present application came to be filed by the proposed defendants stating that they too have property right and interest in the suit property as it was their ancestral property. The counsel for the proposed defendants has produced the copies of handwritten RTC of Sy.No.115/1, Xerox copies of the sale deeds dated 07.02.1969 and 28.01.1971, encumbrance certificate, order sheet in OS No.24/2023 and copy of SSLC marks card of defendant No.3. All these documents prima-facie shows that the suit property is originally purchased by the father of defendant and after his death, Powthi Katha was transferred in the name of the defendant. That in the written statement the defendant contends that the suit

property is his ancestral property. The Sale Agreement at Ex.P1 does also depict that the property in the said agreement, which is suit property in the present case, is his ancestral property. Thus when the documents produced prima-facie establishes the suit property is ancestral property, the proposed defendants who are children of the defendant have also got share in their ancestral property. If the present application is allowed and the proposed defendants are brought on record, it will assist the Court to adjudicate the real dispute between the parties. Hence, it is just and necessary to allow the present application. ***Therefore, point No.1 is answered in the Affirmative.***

**9. Point No.2:** In view of the discussions made above, this Court proceeds to pass the following;

**ORDER**

The IA.No.VII filed u/O I Rule 10(2) of CPC is hereby allowed.

The proposed defendants are brought on record as defendant No.2 and 3. The present defendant is numbered as defendant No.1.

No order as to costs.

For amendment and amended  
plaint by 31.10.2023.

(Dictated to the stenographer on computer directly, then corrected, pronounced and then signed by me in the open Court on this the 29<sup>th</sup> day of September 2023)

**(Shwetha.J)**

Addl. Civil Judge and JMFC  
Periyapatna