

**IN THE COURT OF THE CIVIL JUDGE & JMFC.,
AT T.NARASIPURA**

Present: **Dinesh B.G.,** B.Com. LL.B.,
Civil Judge & JMFC, T.Narasipura.

Dated this the 6th day of April 2015

O.S. No.8/2012

PLAINTIFF/S: **B.Siddaiah,** aged about 58 years, S/o
Late Basavaiah, # Residing at
Byrapura grama, T.Narasipura Taluk,
Mysuru District.

[By Sri. **N.G.J.K.,** Adv.]

Vs.

DEFENDANT/S: **1.Sri.Siddaraju,** aged about 45
years, S/o Siddaraju, r/at Kendana
Koppalu village, T.Narasipura Taluk,
Mysuru District and 2 others.

[By Sri. **H.N.B.N.** Adv. for defendant
No.1, Sri.**B.M.N.** Adv. for defendant
No.3 and defendant No.2 exparte.]

I.A.NO.II

Applicant/s : Sri.B.Siddaiah plaintiff

Vs.

Opponent/s : Sri.Saleem Ahmed, S/o Basheer Khan,
Sosale village and hobli, T.Narasipura Taluk
Mysuru District. defendant No.4

ORDER ON I.A.II UNDER O.1 R.10(2) OF CPC

The applicant / plaintiff has filed this application for impleading the proposed person as defendant No.4 to adjudicate the matter in controversy effectively as he is the necessary party to the proceedings.

2. He has sworn to an affidavit stating that proposed defendant No.4 undertook construction work in his property mentioned at the schedule of the plaint and simultaneously he claimed right over the suit schedule property. He came to know later that the proposed defendant had purchased one site property from defendant No.1 on 10/10/2011. The 1st defendant without having valid title over the ssid schedule property has sold the same to the opponent and showed the suit property to the proposed defendant. Based upon the words of the 1st defendant the proposed defendant started to put up structure in the suit schedule property. Hence, he is necessary party to the suit. Without his presence suit cannot be adjudicated completely and effectively. Hence, he prays to allow the application.

3. The proposed defendant has filed objections stating that he is in possession and enjoyment of the site bearing Janjer No.571, site No.23 measuring east – west 30ft. and north – south 40ft. having purchased the same under registered sale deed dated 10/10/2011 from the defendant No.1 for valuable consideration. In pursuance of registered sale deed khata was changed in his name. The property purchased by him and the property mentioned at the schedule of the plaint have no nexus with each other. Inspite of that the plaintiff has unnecessarily filed this application without having any right. Hence, he prays to dismiss the application.

4. Heard arguments on both sides.

5. The following point arise for my consideration is:

"Whether the presence of proposed defendant No.4 is necessary to adjudicate the matter in controversy completely and effectively?"

6. My finding on the above point is in the **affirmative** for the following:

REASONS

7. This suit has been filed by the plaintiff against defendant Nos.1 to 3 for the relief of permanent injunction restraining defendant No.1 and other persons from their illegal interference in respect of suit schedule site bearing No.26 measuring east – west 19ft. and north – south 40ft. situated at Thriveninagar, T.Narasipura Town. According to plaintiff he is the owner of the site bearing Sy.No.26 measuring 40 x 30ft. situated at Thrivennagar, T.Narasipura Town, which was granted to him by Development officer, T.Narasipura Taluk on 21/11/1980. In the year 1992 one person by name Venkatachalaiah had filed a suit for declaration that he was having absolute right of easement upon property of the plaintiff and permanent injunction in O.S.17/1992, which came to be ended in compromise before Lok Adalath in R.A.No.127/01. As per the compromise decree 3rd defendant changed the measurement of the site of the plaintiff from 30x 40 to 40 x 19ft. and same was reflected in the demand register extract. Now the plaintiff has alleged in this suit that the 1st defendant caused illegal interference with his possession and enjoyment of the suit schedule property.

8. At present he has come up with the present application on the ground that the proposed defendant having purchased the site from the 1st defendant on 10/10/2011 which is not at all in existence, has tried to put up construction in the suit schedule property. According to plaintiff the 1st defendant has shown the suit schedule property as the site sold by him in favour of proposed defendant. Whereas proposed defendant has taken the contention that the suit property and the site purchased by him are not identical and as such there is no need to implead him as a party to the suit. In this suit the points whether defendant No.1 has sold the site in favour of proposed defendant which is not at all in existence; whether suit schedule property was shown to the proposed defendant as the site sold by him; or whether the suit property and the property purchased by the proposed defendant are different one, will have to be adjudicated only after conclusion of trial. Since the plaintiff has alleged that the proposed defendant has tried to put up construction over the suit schedule property on the basis of registered sale deed executed by 1st defendant dated 10/10/2011, it appears that the proposed defendant is necessary to adjudicate the matter in controversy involved, otherwise it will lead to multiplicity of proceedings. Having regard to the facts and circumstances of the case, the presence of proposed defendant is appears to be necessary to adjudicate the matter in controversy completely and effectively. Therefore, the proposed defendant is required to be impleaded as defendant No.4. Hence, I proceed to pass the following:

ORDER

I.A.No.II filed by the
applicant / plaintiff under O.1

R.10(2) r/w Sec.151 of C.P.C., is
hereby allowed.

The Proposed defendant
No.4 is permitted to be
impleaded as defendant No.4.

[Dictated to the Stenographer, transcribed by her, corrected and
then pronounced by me in the Open court, on this 6th day of April
2015]

(DINESH B.G.)
Civil Judge & JMFC.,
T.Narasipura.