



**IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE & J.M.F.C.,
AT: MAGADI.**

Present:

Sri. Sandeep S. Reddy, B.A., LL.B.,
Addl. Sr. Civil Judge & JMFC., Magadi.

DATED: THIS THE 25th DAY OF OCTOBER, 2023

O.S.No.992/2014

Plaintiffs : 1. Sri. Rajappa,
Since dead by his L.Rs.,

(a) Annamma,
W/o. Late. Rajappa,
Aged about 72 years,

(b) Sri. Sundar Raj,
S/o. Late. Rajappa,
Aged about 59 years,

(c) Sri. Madalesameri,
D/o. Late. Rajappa,
Aged about 56 years,

(d) Peter,
S/o. Late. Rajappa,
Aged about 50 years,

(e) Pramila,
D/o. Late. Rajappa,
Aged about 52 years,

(f) Arogyaswamy,
S/o. Late. Rajappa,
Aged about 50 years,

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- (g) Anthony,
S/o. Late. Rajappa,
Aged about 46 years,
- (h) Amu,
D/o. Late. Rajappa,
Aged about 46 years,
- 2. Anthoni Raj,
S/o. Late. Arogyaswamy,
Aged about 45 years,
- 3. Kristina,
D/o. Mariswamy,
Aged about 60 years,
- 4. Sandya,
D/o. Mariswamy,
Aged about 58 years,
- 5. Siman,
S/o. Mariswamy,
Aged about 56 years,

All are R/at:
Solur Village & Hobli,
Magadi Taluk,
Ramanagara District.

(By **Sri. S.G.U.** Advocate)

--V/s--

Defendants : 1. Robert,

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S/o. Swamynath,
Aged about 37 years,

2. Smt. Teresamma,
W/o. Late. Shilubemuthu,
Aged about 60 years,

3. C. Praveenkumar,
S/o. Late. Shilubemuthu,
Aged about 34 years,

All are R/at:
Solur Village & Hobli,
Magadi Taluk,
Ramanagara District.

(D1 by **Sri. S.U.** Advocate)
(D2 & 3 are placed **Exparte**)

ORDER ON IA NO.7 U/O.I R.10(2) of C.P.C.,

The aforesaid suit is filed by the plaintiff praying for the relief of declaration, permanent injunction and consequential reliefs.

2. The aforesaid I.A., is filed by the applicant/plaintiff U/O.I R.10(2) of C.P.C., praying for adding Sri. Yesu @ Rayappa Yesudas S/o. Shilube Muttu, Smt. Anthonamma W/o. Rayappa Yesudas, Stephan Ray S/o. Rayappa Yesudas, Smt. Kanthamma W/o. Late. Alphons, Ranganath

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S/o. Late. Alphons, Rahul S/o. Late. Alphons and Sri. H. P. Raghavendra S/o. H. N. Puttaramaiah, as proposed defendant No.4 to 10 in the aforesaid suit.

3. In the accompanying affidavit to the aforesaid application the plaintiff has stated that, the defendant No.1 to 3 had colluded and created a sale deed dated: 12.05.2010 which is challenged in the aforesaid suit. That, after filing of the aforesaid suit the defendants had created revenue documents. That, the proposed defendant No.4 to 10 had created revenue documents in their names and had executed a sale deed dated: 28.11.2019 in favour of Sri. H. P. Raghavendra i.e., proposed defendant No.7. That, the proposed defendant No.4 to 10 are necessary parties for adjudication of the aforesaid suit and hence prays for allowing the plaintiff to join proposed defendants No.4 to 10 as parties to the aforesaid suit.

4. The notice was duly served on proposed defendant No.4 to 10. The proposed defendant No.4 to 10 appeared before the court and failed to

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file objections to aforesaid I.A. Hence, objections to I.A.No.7 by proposed defendants was taken as not filed.

5. Heard learned advocate for plaintiff and as proposed defendants had remained absent and there was no representation, the arguments of proposed defendants was also taken as heard.

6. Considering the contentions of the parties, following points arise for my consideration.

1. Whether the plaintiff has made out a case for joinder of proposed defendant No. 4 to 10 as necessary parties in the aforesaid suit?
2. What order?

7. My findings for the above points are as under.

Point No.1	:	In the affirmative
Point No.2	:	As per final order For the following,

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REASONS

8. **Point No.1:-** The aforesaid suit is a suit for declaration, permanent injunction and consequential reliefs. The plaintiff has further prayed for declaring the sale deed executed by defendant No.2 & 3 in favour of defendant No.1 dated: 12.05.2010 as null and void and not binding on the plaintiffs.

9. The plaintiff has now filed an application U/O.I R.10 of C.P.C., praying to add proposed defendant No.4 to 10 as defendants in the aforesaid suit. The plaintiff has submitted the registered sale deed dated: 28.11.2019 executed by proposed defendant No.4 to 9 in favour of proposed defendant No.10. The said sale deed was executed on 28.11.2019. The said sale deed was executed by proposed defendant No.4 to 9 in favour of proposed defendant No.10. In the accompanying affidavit to the aforesaid I.A., the plaintiff has merely stated that, the defendant No.1 to 3 have colluded with the proposed defendants in selling the aforesaid property to proposed defendant No.10. Apart from the said averments there is no other material on record to show that

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defendant No.1 to 3 were involved in executing a sale deed by colluding with proposed defendant No.4 to 9 and executing the same in favour of proposed defendant No.10.

10. The aforesaid suit is a suit for declaration, praying for declaring the sale deed executed by defendant No.2 & 3 in favour of defendant No.1 dated: 12.05.2010 as not binding on plaintiffs. The plaintiff has failed to show as to how the proposed defendant No.4 to 10 are proper and necessary parties to the aforesaid suit for declaration and permanent injunction. Without the proposed defendants No.4 to 10 the reliefs sought by the plaintiffs can be adjudicated completely. However, since new sale deed is created and the plaintiff has further made allegation of proposed defendants colluding with the present defendants in executing the sale deed, it is necessary to give the benefit of doubt to the plaintiffs. Further, the proposed defendants have not filed their objections. They have not contested the aforesaid application. They have not appeared before the Court to submit their arguments. Considering the circumstances involved in the aforesaid suit, the benefit doubt should be

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given to plaintiff. Hence, the reasons stated in the accompanying affidavit appears to be genuine.

11. The Hon'ble Supreme Court of India in Vidur Impex & Traders Pvt. Ltd., V/s. Tosh Apartments Pvt. Ltd., (2012) 8 SCC 384 has stated as under;

“1. The court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the court is necessary for effective and complete adjudication of the issues involved in the suit.

2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the court.

3. A proper party is a person whose presence would enable the court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be person in favour of or against whom a decree is to be made.

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4. If a person is not found to be a proper or necessary party, the court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.

5. In suit for specific performance, the court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

6. However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restrain order passed by the court or the application is unduly delayed then the court will be fully justified in declining the prayer for impleadment.”

In view of the aforesaid judgement of Hon’ble Supreme Court and also for the reasons discussed above, I answer point No.1 in the affirmative.

12. **Point No.2:-** In view of reasons on point no.1, and in the interest of Justice and equity, I proceed to pass the following,

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ORDER

IA No.7 filed U/o. I Rule 10 (2) R/w. Sec.151 of CPC filed by the applicants/plaintiffs praying to join Sri. Yesu @ Rayappa Yesudas S/o. Shilube Muttu, Smt. Anthonamma W/o. Rayappa Yesudas, Stephan Ray S/o. Rayappa Yesudas, Smt. Kanthamma W/o. Late. Alphons, Ranganath S/o. Late. Alphons, Rahul S/o. Late. Alphons and Sri. H. P. Raghavendra S/o. H. N. Puttaramaiah are hereby joined/added as defendant No.4 to 10 in the aforesaid suit.

The plaintiff is hereby directed to carryout amendment to the plaint.

The parties to bear their respective costs.

(Dictated to the Typist directly on the computer, typed by her, corrected by me and then pronounced in the open court on this the **25th day of October, 2023.**)

**(Sandeep S. Reddy)
Addl. Sr. Civil Judge & JMFC.,
Magadi.**