

12.11.2024

Plt: M.G.M.

D1: S.L.

D2.,10,11:Expt

D3: M.Y.S.

D4: L.B.A.

D5, 6: T.S.R.

D7,8,12:S.A.

D13 to 16: M.S.K.

D18, 21 to 28: S.A.

D29: T.R.G.

D30: S.G.

For orders on IA No.27

I.A filed by the	Applicant
Date of filing of I.A	02.04.2024

Date of filing of Objection	17.09.2024
Date of Order	12.11.2024

**ORDERS ON I.A.No.27 UNDER ORDER 1 RULE 10(2)
OF CPC.,**

This application is filed by the applicant Sri. Chandraguptha Borkotoky S/o Prabath Borkotoky to implead himself as additional Defendant in this suit.

2. In the affidavit filed accompanying this application, applicant Sri. Chandraguptha Borkotoky states that he came to know that Plaintiff has filed this suit against the Defendant declaration of his right in respect of Sy.No.105/2A1 measuring 8 acres 1 gunta situated at Bannikuppe Village, which is not remained as agricultural land but it has been converted very long back. That several sites have been formed in the said survey number and this applicant has purchased site No.24 measuring 47X30 feet on 30.09.2011 from on Swaraj Kiran Sinha. That this applicant has put up dwelling house over the said property. That only with an intention to deprive the right of this applicant over site property the present suit has been filed. Therefore, his presence in this suit is very much necessary. That if this application is allowed no injustice would be caused to the Plaintiffs. Hence, he prays to allow this application.

3. On the other hand Plaintiff counsel files objections to this application contending that application is not maintainable either in law or on facts. It is further stated that the applicant has not produced the copy of the sale deed in support of this application. That this applicant has not approached this court with clean hands. Hence, he has sought for dismissal application.

4. Heard both the side and perused the materials on record.

5. The following points arise for my consideration:-

(1) Whether presence of applicant Sri. Chandraguptha Borkotoky is necessary in the suit for effective adjudication of the dispute between the parties?

(2) What order?

6. My answers to the above points are as under:-

Point No.1 : In the Negative;

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

REASONS

7. **Point No.1:-** Admittedly present suit is filed for declaration of title and permanent injunction as against the Defendants with respect to land bearing Sy.No.105/2A1 measuring 8 acres 1 gunta situated at Bannikuppe Village, Bidadi Hobli, Ramangara Taluk. When the case was at the

stage of cross-examination of PW.1 the applicant come up with the present application seeking his impleadment on the ground that he has been in possession of a site property formed in suit schedule survey number, which is not an agricultural land. The necessary party is a party in who's absence an effective decree cannot be passed. Proper party is a party who's presence would assist the court in adjudication of the controversy, admittedly applicant has not produced sale deed in support of his contention raised in the application. As per the dictum of the Hon'ble Apex Court reported in **AIR 2019 SC 3577, Gurumit Singh Bhatia Vs. Kiran Panth Rabinson and Ors.**, and decision reported in two tests are to be satisfied for determining the question as to who is necessary party. i) There must be a right to some relief against such party in respect of the controversies involved in the proceedings. ii) No effective decree can be passed in the absence of such party. In the case on hand he Plaintiff has no relief as against the applicant. As the present suit is filed for declaration of title and permanent injunction against Defendant, it is for the Plaintiff to establish his title and possession over suit property. If, the Plaintiff fails to prove this issues he will be dis entitle for any relief. Under such circumstances, even in the absence of applicant an effective decree can be passed. It is also well settled that a Plaintiff cannot be compelled to implead a person against whom he has no claim. Therefore, this court come to conclusion that the Plaintiff is dominus litus and he cannot be forced to add the applicant against whom he does not

want to fight unless it is a compulsion of rule of law, as the dictum of the Hon'ble Apex Court. With these reasons I come to conclusion that applicant is neither necessary nor proper party in this suit. With these reasons **I answer Point No.1 in the "Negative."**

8. **Point No.2:-** In view of my answer to Point No.1, I proceed to pass the following :-

ORDER

IA No.27 filed by the applicant Sri. Chandraguptha Borkotoky under Order I Rule 10(2) of CPC., is hereby dismissed without cost.

(Loksha)
Prl. Senior Civil Judge & CJM,
Ramanagara.