

Order on I.A. No.22 under Order I Rule 10 (2) R/w.

Sec 151 of CPC

The proposed Defendant No.9 has filed this application to implead him as the additional Defendant No.9 in this suit.

2. In the affidavit accompanying the present application, it is sworn by the Applicant that the Plaintiff has filed this suit against the Defendants for the relief of partition and other reliefs in respect of the suit schedule properties.

3. That he has filed the suit in O.S.No.410/2021 in respect of the Sy.No.66 measuring 07 acre 06 guntas, Sy.No.67 measuring 04 acres 05 guntas and Sy.No.73 measuring 04 acre 32 guntas, totally measuring 16 acres 03 guntas out of 03 acres situated in Harisandra Village, Kasaba Hobli, Ramanagara Taluk against Smt. Sarojamma and others, who are already made as the parties to the suit.

He is entitled for specific performance of the contract and therefore it is just and necessary to implead him as the Defendant No.9 in the suit. By allowing this application no loss or hardship is going to be caused to the other side and on the other hand, by rejecting the same he will be put to great loss and hardship which cannot be compensated by any means. Accordingly, it is prayed to allow the application.

4. Per contra the Counsel for the Plaintiff has objections to the present application by opposing to allow the same on the ground that the same is not maintainable. That the suit is of the year 2013 among the sharers. The claim of the applicant is of the year 2021. Even otherwise all the parties to the suit are not the parties to the alleged agreement falsely claimed. That after the partition and final decree, the applicant can proceed against the said persons. Therefore he is not a necessary or a proper party for the adjudication of the present suit.

5. That the Plaintiff is not aware of the any transactions between the parties to the suit and the applicant cannot be regarded as a necessary party by way of any settled legal standard. The applicant is a third party and by filing this application he is attempting to claim interest unauthorizedly and thereby to defeat the share of co-parceners. Hence it is prayed to dismiss the application.

6. Heard both the sides and perused the materials on record.

7. Admittedly, the Plaintiff has filed this suit against the Defendants for the relief of partition and separate possession and for consequential relief of permanent injunction.

8. The record reveals that already the trial of the case has commenced and the case is posted for arguments on the main matter or to report settlement. At this stage the applicant has come up with the present application seeking implead him as the additional Defendant on the ground that he is an agreement holder in respect of the suit schedule 'A' properties.

9. Along with the application the counsel for the applicant has filed memo along with the photocopies of the order sheet, the plaint, order on I.A.No.1, the deposition of PW-1 to 3 in O.S.No.410/2021, the copy of the sale agreement dated 07.12.2013, the extension agreement dated 25.10.2016 and the exhibits marked in the said suit. By relying upon the aforesaid documents it is the claim of the applicant that he too has interest in the suit schedule 'A' property and hence his participation in the suit is very much necessary.

10. However it is a well settled position of law that a party to the proceedings could be joined either as a plaintiff

or as a Defendant, provided there is a cause of action against him. In the present case though the applicant has already filed a suit for specific performance in respect of the suit schedule 'A' property, he claims that he is a necessary party to the present suit. However, it is pertinent to note that as rightly pointed out by the learned counsel for the Plaintiffs, this is a comprehensive for partition among the co sharers and in such circumstance, a stranger to the family cannot be either a necessary or a proper party to the present suit.

11. Moreover as admitted by the applicant himself, already there is a suit for specific performance filed by him which is pending adjudication. In such circumstance, the applicant is at liberty to work out his remedy in the said proceeding. Therefore in the present case, the Plaintiffs, being dominus litis or at liberty to decide against whom they intend to proceed in the suit and they cannot be compelled to implead any party to the suit against whom they claim no relief. Therefore the applicant is neither a necessary nor a proper party to the present suit and as such the application is devoid of merits. Accordingly, the following:-

ORDER

I.A.No.22 filed by the Applicant under Order I Rule 10(2) R/w. Sec. 151 of the CPC is hereby dismissed.

In the circumstances, no order has to
costs.

Sd/-

Prl.Senior Civil Judge and CJM,
Ramanagara.