

KARN320001752015



IN THE COURT OF THE I ADDL.CIVIL JUDGE & J.M.F.C.,
AT KANAKAPURA.

Present: Smt. Savita Rudragouda
Chikkanagoudar., B.A., LL.B.,
I Addl. Civil Judge & JMFC,,
Kanakapura.

Dated: This 22nd day of August 2022

O.S. No. 17/2015

Plaintiff/s : Sri. Krishnegowda
S/o late Kallegowda
@ Dodda Kallegowda
Aged about 50 years,
R/at: Adanakuppe Village,
Kasaba Hobli,
Kanakapura Taluk,
Ramanagara District.

(By Sri.K.V.Mahadevaiah Adv.)

-V/S-

Defendant/s: : 1. Sri. Rajanna
S/o late Kallegowda
@ Dodda Kallegowda
Aged about 55 years,

R/at: Adanakuppe Village,
Kasaba Hobli,
Kanakaura Taluk,
Ramanagara District.

2. Sri. G.M.Muddegowda
S/o Maregowda
Aged about 50 years,
R/at: Hale Gabbadi Village,
Harohalli Hobli,
Kanakapura Taluk,
Ramanagara District.

**(By Sri. Mahadevaiah.M, Adv. for D1,
Sri. Ramachandra Adv. for D2)**

I.A.No.II

Applicant/s : Sri. Krishnegowda

//Vs.//

Opponent/s : Sri. Rajanna and Another

Proposed Defendant : Sri. Rajashekar.K.R
S/o Ramanna.J
Aged about 49 years,
R/at: No.432/A, 3rd Cross,
7th Main Road, H. Block,
Ramakrishna Nagara,
Mysore-570023.

(By Sri.Ramachandra Adv.)

ORDER on IA.No.II under order I Rule 10 R/w

Section 151 of CPC

The plaintiff has filed the I.A. No.II under Order I Rule 10 R/w section 151 of CPC to permit him to implead the proposed defendant No.3 in the interest of justice and equity.

2. In the affidavit accompanying the application the plaintiff has contended that, he has filed the present suit against the defendants for the relief of specific performance of contract with respect to suit schedule property. According to plaintiff, the first defendant is his brother and he was the owner of the suit schedule property having possession of the same however, in order to discharge the hand loans obtained by him at the time of marriage of his daughter and also to meet his family necessities he offered to sell the suit schedule property for a sum of Rs.63,750/- and the plaintiff being the own brother, agreed to purchase the said property accordingly, the first defendant executed sale agreement dated 02.03.2002 in favour of plaintiff. And on the same day at the time of executing the sale agreement before the witnesses, the first defendant received entire sale consideration of Rs.63,750/- from him and on the same day first defendant inducted plaintiff into the physical possession of the suit schedule property but later inspite of approaching him several times the first defendant failed to execute the absolute sale deed,

postponed the same for one or other reasons inspite of receiving entire sale consideration amount. The plaintiff further contended that, he was always ready and willing to get the sale deed registered but since the first defendant was his brother he waited up to November 2014 for getting registered suit property in his name but during the month of November 2014 the first defendant denied the execution of sale deed in plaintiff's favour and told him that he has already executed sale deed in favour of second defendant with respect to suit property. On inquiry plaintiff came to know that first defendant has created alleged sale deed in favour of second defendant with intention to defeat, deprive plaintiffs right over suit property. Immediately plaintiff got issued legal notice to defendant No.1 and 2 calling upon them to come up and execute absolute sale deed in his favour but defendants failed to execute regular sale deed in his favour hence, plaintiff filed the present suit but during the pendency of the suit second defendant with an intention to defeat and defraud rights of the plaintiff over suit property colluding with proposed defendant namely Sri.Rajashekar.K.R. has created sale deed dated 13.06.2016 in favour of said Sri.Rajashekar.K.R. with respect to suit property and on the basis of said sale deed said Sri.Rajashekar.K.R. got the katha changed in his name and trying to dis-possess plaintiff from the suit property hence, the present application is filed to implead him as defendant No.3, as the proposed defendant is proper and necessary party to the suit.

3. The proposed defendant No.3 has appeared before the court after the service of notice through his advocate and has filed his objection to the said application.

4. In his objection the proposed defendant No.3 has denied the contentions taken by the plaintiff in the affidavit accompanying the application under Order I Rule 10 R/w 151 of CPC and has specifically contended that, first defendant is the absolute owner of the suit schedule property having got the suit property through partition between plaintiff and himself and after partition first defendant has got the katha changed in his name and paying Kandayam regularly to the Government. According to proposed defendant No.3 first defendant has not executed any sale agreement in favour of plaintiff nor has he handed over any possession of suit property to the plaintiff however, to meet his family necessity the first defendant has sold the suit property in favour of second defendant and in turn the second defendant has sold the suit property in favour of proposed defendant No.3 and now the proposed defendant No.3 is in possession and enjoyment of the suit property having got the katha changed in his name and paying Taxes regularly to the Government. According to proposed defendant No.3 plaintiff has concocted, created and fabricated the alleged sale agreement dated 02.03.2002, if at all the alleged agreement was executed why the plaintiff did not file the suit

within the limitation of three years ? According to proposed defendant No.3, he is the bonafide purchaser, in lawful possession of the suit schedule property. Hence, prays to dismiss the IA.No.II.

5. Heard both sides. Perused the entire records.

6. The points that arises for my consideration are as under:

1. Whether the plaintiff has made out a grounds to allow I.A No.II filed under order I Rule 10 R/w Section 151 of CPC ?

2. What Order ?

7. My answer to the above point:

Point No.1: In the Affirmative

Point No.2 : As per final order

For the following :

: REASONS :

8. **Point No.1** :- The plaintiff has filed the suit for specific performance of agreement based on the alleged sale agreement executed on 02.03.2002 by the 1st defendant in favour of plaintiff. And the case is at the initial stage and the trial has not yet

commenced. Now the plaintiff has filed this application to implead proposed defendant No.3 in this suit. The proposed defendant No.3 has filed the objection to said I.A. The plaintiff has contended that first defendant who is the own brother of the plaintiff and the owner of the suit property in order to discharge his hand loans obtained at the time of marriage of his daughter and to meet his family necessities offered to sell suit property for sum of Rs.63,750/- and on plaintiff agreed to purchase the same. Later first defendant executed sale agreement dated 02.03.2002 by receiving sale consideration of Rs.63,750/- before the witnesses and put the plaintiff in possession of suit property and inspite of repeated requests he did not execute sale deed in his favour but to defraud and defeat the rights of plaintiff over suit property sold the said property to second defendant and the second defendant in turn sold it to proposed defendant No.3.

9. On the other hand, the proposed defendant No.3 admits that suit property was sold to him by defendant No.2. His only objection is that no sale agreement was executed in favour of plaintiff by first defendant as alleged by plaintiff and that first defendant to meet his family necessities sold suit property to second defendant and second defendant in turn sold suit property to him. According to proposed defendant No.3 he is the bonafide purchaser of suit property having possession of the same. By looking into the objections filed by him it is clear that he admits

the alleged execution of sale deed with respect to suit property in his favour by second defendant hence, he is necessary and proper party in the present suit for specific performance of contract being subsequent purchaser of suit property. So far as contentions taken by him that he is a bonafide purchaser in possession of suit property is concerned same is question of trial hence, since the suit is at the initial stage, it is just and proper to implead the proposed defendant No.3 in the suit so that the whole controversy could be determined at one and the same time. Hence, the plaintiff has made out grounds to allow the IA.No.II. Therefore, the **Point No.1 answered in the Affirmative.**

10. **Point No.2** : In view of the above reasons, I proceed to pass the following :

ORDERS

IA.No.II filed by the plaintiff
under order I Rule 10 R/w Section
151 of CPC is hereby allowed.

(Dictated to the Stenographer, transcribed and computerized by her, corrected and then pronounced by me in the open court this the **22nd day of August 2022**)

**I Addl. Civil Judge & J.M.F.C.,
Kanakapura.**

ORDERS ON I.A. No.III

The plaintiff has filed I.A. No.III under Order I Rule 10 R/w section 151 of CPC to permit him to implead the proposed defendant No.4 in the interest of justice and equity.

2. In the affidavit accompanying the application the plaintiff has stated that, he has instituted the present suit against defendant No.1 and 2 seeking the judgment and decree of specific performance of contract directing the defendants to executed the regular/registered sale deed in his favour with respect to suit schedule property based on sale agreement executed in his favour by defendant No.1 dated 02.03.2002, by receiving the entire sale consideration of Rs.63,750/- and inducted plaintiff into the peaceful possession of suit schedule property. Subsequently, defendant No.1 in collusion with defendant No.2 got executed false sale deed dated 19.06.2008 in favour of defendant No.2 with malafide intention of rejecting to perform his part of specific performance of contract entered into with him hence, plaintiff was constrained to file this suit against defendant No.1. However, during the pendency of the suit defendant No.2 with malafide intention to deprive and defraud the plaintiff's right and interest

in the suit schedule property and in order to defeat the suit colluding with one Sri.Rajashekar.K.R got executed a false sale deed dated 13.06.2016 in favour of said Sri.Rajashekar with respect to suit schedule property, based on the said sale deed Sri.Rajashekar got the katha of the suit schedule property transferred in his name and tried to dis-possess the plaintiff from suit schedule property. Therefore, plaintiff filed I.A.No.II seeking permission to implead said Sri. Rajashekar as defendant No.3 in the present suit. During the pendency of the said I.A, the proposed defendant No.3 and 4 knowing well about the pending proceeding got executed another false/purported sale deed dated 06.06.2020 in favour of proposed defendant No.4 in respect of suit schedule property with an intention to harass the plaintiff based upon the said purported sale deed. The proposed defendant No.4 has got the katha changed in his name. After getting the revenue records changed in her name the proposed defendant No.4 along with some other people visited the suit schedule property on 25.07.2021 and tried to dis-possess the plaintiff from suit schedule property by putting fence forcibly around the property, separating from plaintiff's abutting adjacent to land, regarding which the plaintiff filed written complaint to the Kanakapura Rural Police Station against such forcible act of defendant No.4.

3. The plaintiff further submits that, he has bonafide occupancy and sale deed in his favour from defendant No.1 and

proposed defendants having full knowledge of plaintiff's interest over the suit schedule property got executed false and purported sale deed during the pendency of the proceeding of this suit so as to defeat the interest of plaintiff over the suit schedule property hence, prays to permit him to implead the proposed defendant No.4 as she is a necessary party to the suit.

4. In spite of due service of notices to proposed defendant No.4 on I.A.No.III filed under Order I Rule 10 of CPC she has not appeared before the Court hence, she is placed *ex parte*.

5. Heard plaintiff's counsel on I.A.No.III. Perused the materials on record.

6. The plaintiff has filed the suit for specific performance of agreement based on the alleged sale agreement executed on 02.03.2002 by the 1st defendant in favour of plaintiff. And the case is at the initial stage and the trial has not yet commenced. Now the plaintiff has filed this application to implead proposed defendant No.4 in this suit. Proposed defendant No.4 is placed *ex parte*. As the present suit is for specific performance of contract it is necessary to implead the subsequent purchasers of suit property and the plaintiff being *dominam litis* plaintiff has all the rights to implead any person who appears to be the necessary party to him in his case, so that the whole controversy could be

determined at one and the same time. It also helps to avoid multiplicity of suits. Hence, I proceed to pass the following :

ORDER

IA.No.III filed by the plaintiff
under order I Rule 10 R/w Section
151 of CPC is hereby allowed.

Plaintiff's shall carryout
amendment and furnish amended
plaint.

Call on 09.09.2022.

**I Addl. Civil Judge & J.M.F.C.,
Kanakapura.**