

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

PRESENT : Sri. Krishnamurthy.N. B.A., L.L.B.
II Addl. Civil Judge & J.M.F.C.,
Kanakapura.

Dated this the 17th day of July, 2021

O.S. No. 56/2010

PLAINTIFF : Smt. Shivamma
W/o Ningegowda
D/o late Kullegowda
Aged about 51 years,
R/at: Achalu Village,
Sathanur Hobli,
Kanakapura Taluk,
Ramanagara District.

(By Sri. R.M.C.G., Adv.)

V/s

DEFENDANT : 1. Smt. Ningamma @
Puttathayamma
W/o late Kullegowda
Aged about 78 years,

2. Sri. Shivaramu
S/o late Kullegowda
Aged about 48 years,

3. Sri. Anil Kumar
S/o Shivaramu
Aged about 24 years,

D2 & D3 are R/at: No. 332,
Opposite to B.N.D.I.B.,
Kanakapura Town,
Ramanagara District.

4. Sri. Ramesha
S/o late Kullegowda
Aged about 43 year,

D1 & D4 are R/at:
Gerahalli Village,
Sathanur Hobli,
Kanakapura Taluk,
Ramanagara District.

5. R. Munawar Beig
S/o Rehaman Beig,
Aged about 43 years,
R/at: No. 368,
Samiya Mohalla,
C.K. Road Cross,
Channapatna Town,
Ramanagara District.

(By Sri. M.G. Adv. for D1
to D4, Exparte for D5)

I.A. No. III

PLAINTIFF/S
APPLICANTS

: Smt. Shivamma

V/s

PROPOSED
DEFENDANT/S

: Smt. Usha.S. Murthy
W/o C.G. Sathyamurthy
Aged about 56 years,

R/at: No. 705, 3rd Cross,
8th B Main Road,
I.I.M.B. Post,
Vijaya Bank Layout,
Bangalore-76.

**ORDER ON I.A. No.III, UNDER ORDER 1 Rule 10 R/w 151
OF CPC**

The instant I.A. No. III U/o 1 Rule 10 R/w 151 of CPC has been filed by the plaintiff seeking an order for impleadment of proposed defendant No.6 Smt. Usha.S Murthy wife of Sri. C.G.Sathyamurthy as party to the proceeding.

2. In the accompanying application an affidavit sworn by the plaintiff to the effect that, herself with the defendant No.1 to 4 have constituted Undivided Hindu Joint Family consisting suit schedule property being joint owners and have been in joint possession and enjoyment thereof. The 5th defendant who alleged purchaser of property has sold the same in favour of proposed defendant No.6 during pendency of the suit in order to deprive the legitimate share of plaintiff over the suit property through registered sale deed dated 12.09.2012 would become void, illegal and is not binding in nature. The defendant No.5 in collusion with the proposed defendant No.6 have created unrighteous claim and got transferred the katha based on said sale deed. Therefore, plaintiff prays to order accordingly.

3. In response to the notice on the application issued, the 6th proposed defendant represented through counsel and filed objection statement wherein it is stated that, the application filed by the plaintiff is not maintainable contending that the proposed defendant becomes bonafide purchaser for value having purchased the suit schedule property through registered sale deed dated 12.09.2012 executed by the vendor i.e., 5th defendant and therefore, she prays to dismiss the application with cost.

4. Heard and perused.

5. Now the points that would arise for consideration of this court as follows:

1. Whether plaintiff has make out grounds that the proposed defendant is proper and necessary parties to the proceeding for adjudication of the matter in question effective ?

2. What order ?

6. My findings to the above points as here under:

Point No.1 : Affirmatively

Point No.2 : As per the final order

for the following:

REASONS

7. **Point No.1:** The plaintiff has filed this instant application U/o I Rule 10 of CPC to add the proposed defendant No.6 as party to the proceeding. The plaintiff is claiming to be joint owner with the defendant No.1 to 4 of suit schedule property the agricultural land bearing Sy. No.11 of Gerahalli Village, Sathanur Hobli, having constituted Undivided Hindu Joint Family amongst them. Therefore, she seeks for partition and separate possession her 1/3rd share in the suit. The defendant No.1 to 4 have disputed the claim for partition made by the plaintiff in the suit contending that, suit schedule property becomes self acquired property of first defendant and sold the same in favour of 5th defendant on 27.11.2006 itself and he is in exclusive possession being owner thereof.

8. It is pertinent to note here itself that, the alleged purchaser, the defendant No.5 is remained absent and placed exparte. According to plaintiff, during pendency of the suit that on 12.09.2012 the 5th defendant has been allegedly sold the property in question in favour of proposed defendant No.6 through registered sale deed which is void and will not binding on the plaintiff's shares. It is settled that in a suit for partition, the court only declares shares to which member of the joint family are entitle to and for such declaration, the presence of purchaser is not necessary.

9. As per plaintiff, 5th defendant had purchased the joint family property deriving interest in the undivided property of joint family members. Having purchased the property from the joint family member the 5th defendant has got interest and who subsequently sold the same in favour of proposed defendant No.6 and as such, subsequent purchaser from the earlier purchaser is only a proper party and not necessary party in a suit for partition. As already observed above, the so called earlier purchaser i.e. 5th defendant is remained absent. Though there is no nexus between the transferee i.e., proposed 6th defendant and party to the suit from whom property was allegedly sold in favour of 5th defendant, the subsequent purchaser from earlier purchaser becomes proper party so as to work out equity in the share of joint family member from whom the 5th defendant acquired the property in question and thus, in order to avoid multiplicity of proceeding and for the reasons stated above the court is of the opinion that application needs to be allowed and hence, **Point No.1 is answered in the Affirmatively.**

10. **Point No.2:** Hence, I proceed to pass the following:-

ORDER

I.A. No. III U/o 1 Rule 10 R/w 151 of CPC has been filed by the plaintiff is hereby allowed.

Thereby plaintiff is permitted to implead the subsequent purchaser namely Smt. Usha.S.Murthy wife of C.G.Sathyamurthy as proposed defendant No.6 in the suit and shall carryout amendment and furnish amended plaint accordingly.

(Dictated to the Stenographer, transcribed and computerized by her, then corrected and pronounced by me in the Open Court on this 17th day of July 2021)

**II Addl. Civil Judge & JMFC.,
Kanakapura.**