

KARN320022802015



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 21st day of December 2023

O.S. No. 598/2015

Plaintiff/s : Bhyraiah @ Sothappa
S/o late Kariyappa @ Mandachaiah
Aged about 65 years,
R/at: Doddamudavadi Village,
Harohalli Hobli,
Kanakapura Taluk,
Ramanagara District.

(By Sri.B.L.Mahalingaswamy, Adv.)

-V/S-

Defendant/s: 1. Smt. Shivamma
W/o late Channaiah @ Mariyappa
Aged about 70 years,

2. Saraswathi
D/o late Channaiah @ Mariyappa

Aged about 47 years,
R/at: Kottagalu Village,
Harohalli Hobli,
Kanakapura Taluk,
Ramanagara District.

3. Sri. Mariswamy
S/o late Channaiah @ Mariyappa
Aged about 45 years,
4. Smt. Prema
D/o late Channaiah @ Mariyappa
Aged about 43 years,
5. Sri. Gangadhara
S/o late Channaiah @ Mariyappa
Aged about 38 years,
6. Smt. Shobha
D/o late Channaiah @ Mariyappa
Aged about 36 years,
R/at: Chikkamudavadi Village,
Kasaba Hobli,
Kanakapura Taluk,
Ramanagara Dist.
7. Smt. Mamatha
D/o late Channaiah @ Mariyappa
Aged about 34 years,
8. Smt. Jayamma
W/o late Ananda
Aged about 50 years,
9. Smt. Uma
D/o late Ananda
Aged about 36 years,

10. Sri. Mahendra
S/o late Ananda
Aged about 34 years,

D1, D3 to D5 and D7 to D10 are
R/at: Doddamudavadi Village,
Harohalli Hobli,
Kanakapura Taluk.
Ramanagara District.

**(By Sri. S.Devadas Adv. for D3, D8
& D10, Exparte for D1, D2 & D7)**

I.A.No.IV

Applicant/s : Sri. Mahendra
Defendant No.10

//Vs.//

Opponent/s : Sri. Byraiah @ Sothappa

Proposed Defendant : Panchayth Development Officer,
Doddamudavadi Grama
Panchayath
Doddamudavadi Village,
Harohalli Hobli,
Kanakapura Taluk.
Ramanagara District.

ORDER on IA.No.IV under order I Rule 10(2) R/w

Sec.151 of CPC

The present application I.A. No.IV, is filed under Order I
Rule 10(2) R/w Sec.151 of CPC by the defendant No.10 to

implead the proposed defendant No.11 Panchayath Development Officer as a party in the interest of justice and equity.

2. In the affidavit accompanying the application, the defendant No.10 states that, he is the absolute owner in possession and enjoyment of the suit item No.1 of the schedule property bearing Sy.No.249 measuring 2 acres situated at Doddamudavadi Village, Harohalli Hobli, Kanakapura Taluk. According to defendant No.10 the katha of the suit item No.1 stands in the name of his grandfather Sri.Mandachi @ Kariyappa @ Mandachaiah @ Manthakki since from 1969-70 till current year and after his death his son i.e. father of the defendant No.10 Sri.Anandaiah allegedly got the possession and enjoyment of said property under the Panchayath Parikath dated 13.09.1994 entered into between him and his brother Sri.Kariyappa @ Manchaiah i.e. father of the plaintiff but the same was not registered and at that time Fragmentation Act was in force. according to defendant No.10, the suit item No.1 of the schedule property originally found in Sy.No.169 and after Durasth and pakka phodi done by the concerned Survey Authorities the same has been assigned new Sy.No.249 but the father of defendant No.10 being an illiterate, innocent and ignorant, having no worldly knowledge did not get the katha changed into his name and after his death defendant No.10 is in

possession and enjoyment of said property by growing Ragi, Jowar, Groundnut and other cereal crops and with respect to said property plaintiff has allegedly executed Relinquishment Deed on stamp paper before the witnesses in his favour.

3. The defendant No.10 further contends that, his mother i.e. defendant No.8 had given an application for grant of construction of fish pond in the said property and the proposed defendant No.11 had sanctioned the amount in respect of construction of fish pond in the said property but on the instigation of the plaintiff and the Village political leaders even though the plaintiff has no right, title, interest nor possession whatsoever over the said property the proposed defendant No.11 at their instigation has not released the amount in respect of construction of fish pond and hence, submits that it is just and necessary to implead the proposed defendant No.11 in this case. He also submits that, he has got a prima-facie case in his favour and the balance of convenience lies in his favour and if the application is not allowed he will be put to much hardship and inconvenience and hence, prays to allow the application.

4. In the affidavit, filed by the proposed defendant No.11 i.e. the Panchayath Development Officer, Doddamudavadi Grama Panchayath, Doddamudavadi Village, Harohalli Hobli, Kanakapura Taluk, he has admitted the facts stated by the defendant No.10 in his affidavit accompanying the application

I.A.No.IV and also states that defendant No.10 has constructed residential house in suit item No.1 of the schedule property and residing therein with family members and has also installed a bore-well in the said property and got connected electricity from the concerned BESCOM authority and had also give the requisition to Doddamudavadi Grama Panchayath for grant of construction of fish pond in said property and that after visiting the spot having conducted the mahazar he has sanctioned permission for construction of the fish pond in the said property and he also states that defendant No.10 having completed the fish pond is entitled to receive the said sanctioned amount for construction of fish pond and that he has no objection to release the said amount in favour of defendant No.10 and that he is ready to pay the amount to defendant No.10 and hence, gives consent through the affidavit.

5. Heard. Perused the entire records.

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

1. Whether the defendant No.10 has made out a ground to allow IA No.IV filed under order I Rule 10 of CPC ?

2. What Order ?

7. My answer to the above point:

Point No.1: In the Negative

Point No.2 : As per final order

For the following :

REASONS

8. **Point No.1** :- This is a suit filed by the plaintiff against the defendants seeking the relief of partition and separate possession of his share in the suit schedule properties by metes and bounds and now during the pretrial stage the defendant No.10 has filed this present application to implead the proposed defendant No.11 as a party to the suit in the interest of justice and equity. In the affidavit accompanying the said application the defendant No.10 contends that, he is the absolute owner in possession and enjoyment of suit item No.1 of the schedule property bearing Sy.No.249 having inherited the same from his father Sri.Anandaiah who had got the said property in a Panchayath Parikath dated 13.09.1994 entered between him and his brother Sri.Kariyappa @ Manchaiah who is the father of the plaintiff but his father on account of illiteracy, innocence, ignorance and lack of worldly knowledge had not got the katha changed in his name and the katha of the said property since from 1969 -70 to till now stands in the name of his grandfather Mandachi @ Kariyappa @ Mandachaiah @ Manthakki. According to defendant No.10 after the death of his father, he is

in possession of suit item No.1 property and the plaintiff has allegedly executed the relinquishment deed in his favour and the defendant No.8, mother of defendant No.10 had given an application for grant of construction of fish pond in the said property to the proposed defendant No.11 and the proposed defendant No.11 had sanctioned the construction of the said fish pond but at the instigation of the plaintiff and the Village political leaders even though plaintiff has no right, title, interest or possession whatsoever over the said property, the proposed defendant No.11 at their instigation has not released the amount in respect of construction of fish pond to them and hence, prays to allow the application and to permit him to implead the proposed defendant No.11 in this suit.

9. In the affidavit filed by the proposed defendant No.11 he has admitted all the facts alleged by the defendant No.10 and states that is ready to pay the amount sanctioned to defendant No.10 for construction of fish pond in the suit item No.1 schedule property and that he has no objection to release the said amount in his favour.

10. The present suit being the one for partition and separate possession of suit schedule properties, the proposed defendant No.11 even though submits that he has no objection to release the said amount in favour of the defendant No.10, the

proposed defendant No.11 is neither a necessary nor a proper party to the suit hence, he cannot be made party to the suit.

11. At this point of time it is relevant to note that, under Order I Rule 10(2) of CPC “the court may at any stage of the proceeding either upon or without the application of either party and on such terms as may appear to the court to be just, order to add any person as plaintiff or defendant, whose presence before the court may be necessary in order to enable the court to effectually and completely adjudicate and settle all the questions involved in the suit”.

12. In the case on hand, it is first and foremost notable fact that, present suit is filed seeking the relief of partition and separate possession of the suit schedule properties hence, the fact that proposed defendant had sanctioned the amount for construction of fish pond in suit item No.1 in favour of defendant No.8 but later refused to release the said amount at the instigation of plaintiff is not relevant to the case in hand. The proposed defendant appears to be neither a necessary party nor a proper party to the suit. The presence of the proposed defendant is not necessary for effectual and complete adjudication of question involved in the suit. If defendant No.10 has any claim against the proposed defendant No.11, he can file a separate suit and the same cannot be decided in this suit and

even though proposed defendant No.11 has admitted the claim of the defendant No.10 he cannot be made party to this suit. In a suit for partition, only those persons are necessary and proper parties, who have interest and right in the suit properties and all those persons who are not interested in the result of the suit or entitled to any share in the property are not necessary or proper parties. Here it is a notable fact that, the proposed defendant No.11 is the Panchayath Development Officer, Doddamudavadi Grama Panchayath, Doddamudavadi Village, and he does not fit in any of these categories, as he has no interest in the suit properties. Hence, for the reasons stated above I answer the **point No.1 in the Negative.**

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

ORDERS

IA.No.IV filed by the
applicant/defendant No.10 under
order I Rule 10(2) R/w Section 151 of
CPC is hereby dismissed.

(Dictated to the Stenographer, transcribed and computerized by her, corrected and then pronounced by me in the open court this the **21st day of December 2023**)

Sd/-

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