

1) OS. No. 16-2017 Order on IA No. 3

IN THE COURT OF THE SENIOR CIVIL JUDGE

AND J.M.F.C. MAGADI

Present:- Smt. Yermal Kalpana
BSc. LLM
Sr. Civil Judge & JMFC.
Magadi.

OS. No. 16-2017

DATED THIS 10th Day of October 2018

Plaintiffs:-

1. Jayamma,
2. Smt. Sunanda,
3. Kantharaj,
4. Smt. Jayalakshmi @ Jayalakshamma,
5. Vijay Kumar,
6. Smt. Bhagya

AND:-

Defendants:-

1. Tahasildar,
2. Asst. Commissioner,
3. Deputy Commissioner,
4. Chief Secretary,
5. Gundurao.

ORDER ON IA No. 3

The impleading applicants have filed this application under Order 1 Rule 10 (2) of CPC seeking to implead them as defendants in this case.

2. In the accompanying affidavit, the impleading applicant/proposed 8th defendant has stated that the plaintiffs have filed the suit for the relief of declaration that they have perfected their title by way of adverse possession and they have filed the suit because of the order of the Tahasildar/1st defendant entering the name of Government in the revenue

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records of the suit schedule property., The said order was passed at the instance of the impleading applicants.

3. The 8th defendant further submits that passing of the order by the Tahasildar, the plaintiffs have filed this suit for declaration which is not maintainable. The impleading applicants are the complainants before the 1st defendant and the plaintiffs have suppressed this fact before this court. The plaintiffs are trying to grab the public property by creating documents. According to the impleading applicants, originally the land bearing Sy. No. 165 measuring 5 acre 12 guntas belonged to Pension Sheristadar Ramaraya and after his death his family members have divided the properties under the Registered Partition Deed dated 24.03.1954, wherein it was clearly mentioned that out of 5 acre 12 gutnas, 2 acres has been acquired by the Government for allotment of sites to the villagers of Mallannapalya and acquisition amount was also deposited. The remaining 3 acre 12 guntas was sold by the son of Pension Sheristadar Ramaraya i.e D.R Gundurao to Smt. Venkatamma on 12.05.1964. Smt. Venkatamma sold 1 acre 26 guntas out of 3 acre 12 guntas in favor of Dasappa under the registered sale deed dated 15.05.1964. After these transactions, the revenue authorities assigned new number i.e Sy. No. 165/1 to the acquired Government Land, Sy. no. 165/2 to the land measuring 1 acre 21 guntas retained by Smt. Venkatamma and Sy. No. 165/3 to the land measuring 1 acre 26 gutnas sold to Dasappa. The Sy. No. 165/1 is a village gramatana land. But the sons of Venkatamma, after her death changed

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the revenue records of Sy. No. 165/1 measuring 1 acre 21 guntas excluding karab and Sy. no. 165/2 measuring 1 acre 26 guntas in their name, though they have no right over the land in Sy. no. 165/1. The impleading applicants have also taken up contentions of several other sale transactions which has taken place with respect to property in Sy. No 165. The impleading applicants have produced documents in support of their contention. Hence they have prayed to allow the applicants and permit them to come on record.

4. The plaintiffs have filed the objection to this application and have stated that the impleading applicants are not their close relative and the other applicants have not given Power Attorney to the 8th applicant to file this application. The applicants are trying to mislead the court for wrongful gain. The applicants are not necessary and proper parties to adjudicate the dispute involved. If this application is allowed, the plaintiff will be put to loss and hardship. The impleading applicants have not placed any materials to show that on what capacity they have filed the application. There is no acquisition proceedings for having acquired the suit schedule property. The plaintiffs have challenged the order of Tahasildar before the Assistant Commissioner, hence on these grounds they have prayed for rejecting the application.

5. Heard both the sides and perused the materials on record, the points that arise for consideration are:-

1. Whether applicants have made out grounds to allow IA No. 3 ?
2. What order ?

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6. My findings to the above points are as follows:-

Point No.1 In the **affirmative**

Point No.2 : As per the final order

For the following

REASONS

7. POINT No. 1 :- The plaintiffs have filed this suit for declaration to declare their title by way of adverse possession that they are in continuous possession since 1964. But on perusal of the records produced by the impleading applicants at this stage, it goes to show that in the year 1953-54 itself the land measuring 2 acre was acquired by the Government for allotment of the sites to the villagers and for other purpose.

8. Admittedly, the impleading applicants are parties before the proceedings of Tahasildar wherein they have filed complaint. The Tahasildar is the 1st defendant in this case and the impleading applicants have furnished several documents with respect to the suit schedule properties including the ones which according to them is the property acquired by the government for construction of houses and the same has been found mentioned in the partition deed dated 24.03.1954. The impleading applicants are parties before the Hon'ble High Court of Karnataka in WP No. 21276/2017 which the plaintiffs have filed.

9. Hence considering that the impleading applicants are parties before the Hon'ble High Court of Karnataka filed by the plaintiffs with respect to the suit schedule properties

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wherein they have filed their objection, it is necessary that the impleading applicants be brought on record as defendants in this case to enable this court to come to a fair conclusion regarding the issues in question. Therefore, the application filed by the impleading applicants deserves to be allowed. **Accordingly, the point No. 1 is answered in the affirmative.**

10. POINT No.2:- In view of my findings on point No.1 and the reasons stated therein, I proceed to pass the following:-

(O R D E R)

The IA No. 3 filed by the impleading applicants is allowed,

The impleading applicants are brought on record as defendant Nos. 6 to 13.

The plaintiffs are directed to amend the plaint accordingly.

(Dictated to the Stenographer, transcribed by him, corrected and signed by me and then pronounced in the open court on this the **10th Day of October 2018**)

**(Smt. Yermal Kalpana).,
Sr. Civil Judge & JMFC.,
Magad**

Prs./-

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