

KARN410003762015



**IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE & J.M.F.C.,
AT: MAGADI.**

Present:

Sri. Hanumanth Satwik.,^{LL.M.}
Addl. Sr. Civil Judge & JMFC., Magadi.

DATED: THIS THE 11th DAY OF JANUARY, 2023
F.D.P.No.2/2015

- Petitioners** : 1. Sri. Muniyappa,
S/o. Late. Muniyappa,
Aged about 60 years,
2. Sri. Muniraju,
S/o. Late. Muniyappa,
Aged about 58 years,
3. Sri. Somashekar,
S/o. Late. Kempaiah,
Aged about 34 years,
4. Smt. Muniyamma,
W/o. Lakshmanna,
D/o. Late. Muniyappa,
Aged about 62 years,
5. Smt. Siddamma,
W/o. Late. Muniyappa,
Aged about 88 years,

All are R/at: Kethohalli,
Tavarekere Hobli,
Bangalore South Taluk.

(By **Sri. M.K.S.** Advocate)

V/s

- Respondents** :
1. Sri. Doddarangaiah,
S/o. Late. Muniyappa,
Aged about 64 years,
Since dead by his L.Rs.,

(a) Sri. D. Nagaraj,
S/o. Doddarangaiah,
Aged about 29 years,

(b) Sri. D. Muniyappa,
S/o. Doddarangaiah,
Aged about 26 years,

(c) Smt. Muniyamma,
D/o. Late. Doddarangaiah,
W/o. Muthuraj,
Aged about 30 years,
R/at: Hunigeri Village,
Tavarekere Hobli,
Chunchanaguppe Post,
Bangalore South Taluk.
 2. Sri. D. Nagaraj,
S/o. Doddarangaiah,
Aged about 29 years,
 3. Sri. D. Muniyappa,
S/o. Doddarangaiah,
Aged about 26 years,

R1(a & b), 2 & 3 are R/at:
Kethohalli,
Tavarekere Hobli,
Bangalore South Taluk.
 4. Sri. G. Venkatesh,
S/o. Giryappa,
Aged about 48 years,
R/at: Peddanahalli Village,

Tavarekere Hobli,
Bangalore South Taluk.

{ R1(c), 3 & 4 **Exparte** }
{ R2 **Dismissed** }

ORDER ON IA No.8

The present petition is for drawing final decree.

2. The present application has been filed by the applicant praying this court to implead him as respondent no.5 in the present petition. It is the case of the applicant that he is the bonafide purchaser of the schedule property. He obtained khata of the schedule property on the basis of the sale deed dated: 09.03.2010. Defendant no.1 to 3 sold the schedule property in his favour. The suit bearing O.S.No.142/2007 was decreed vide judgement dated: 26.11.2013. As such, his presence is necessary for adjudication of the dispute. In this regard, the applicant prays as above.

3. The petitioners in their objections contended that the present application is not maintainable. The applicant is not a necessary party to the present petition. The Doctrine of *lis pendens* provides that no fixed property can be transferred while an action relating to it is pending before the court of Law. The transaction between respondent no.4 and

the impleading applicant comes within the purview of *lis pendens*. The present application is misconceived. Defendant no.1 to 3 have no independent rights over the schedule property to sell in favour of respondent no.4. The sale deed is created for the sole purpose of making wrongful gain. The appeal bearing R.A.No.5/2016 preferred by respondent no.2 and 3 came to be dismissed. In this regard, the petitioners pray to reject the application.

4. Heard counsel for the applicant and the petitioners.

5. Considering the case of the parties, following points arise for my consideration.

1. Whether the applicant has made out sufficient grounds to come on record as respondent in the present petition?
2. What order?

6. My findings for the above points are as under.

Point No.1	:	In the affirmative
Point No.2	:	As per final order
		For the following;

REASONS

7. **Point No.1**:- It is the case of applicant that he purchased the schedule property from defendant no.1 to 3 vide sale deed dated: 09.03.2010. He is a bonafide purchaser of the schedule property. In this background, I have perused the materials on record. Be it stated, it is not in dispute that the applicant purchased the schedule property from defendant no.1 to 3. Further, it is not in dispute that the applicant purchased the schedule property which is the subject matter of suit bearing O.S.No.142/2007, during the pendency of the suit.

8. Having said this, the applicant being the transferee *pendente lite* of the property subject matter of suit bearing O.S.No.142/2007, I am of the view that it is necessary to hear the applicant and decide the matter without effecting the interest of non-transferers. In this regard, it is befitting to refer the decision of Hon'ble Supreme Court of India between Amith Kumar Shah & Anr., V/s. Farida Khatoon & Anr., cited in (2005) 11 SCC 403, wherein the Hon'ble Court held thus;

“But the transferee pendente lite can be added as a proper party if his interest in the subject matter of the suit is substantial and not just peripheral. A transferee pendente lite to the extent he has acquired interest from the defendant is vitally interested in the litigation,

whether the transfer is of the entire interest of the defendant; the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff. Hence, though the plaintiff is under no obligation to make a lis pendens transferee a party; under Order XXII Rule 10 an alienee pendente lite may be joined as party. As already noticed, the Court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests.”

Be it stated, this decision of the Hon'ble Apex Court was subsequently followed by the Hon'ble High Court of Karnataka in its decision between G. Murthy V/s. K. Annayappa [W.P.No.10008/19 (GM-CPC)], wherein the Hon'ble High Court allowed the transferee *pendente lite* to come on record in the FDP proceedings. On this touchstone, considering the Law enunciated by the Hon'ble Apex Court which was subsequently followed by the Hon'ble High Court of Karnataka, I am of the view that if the applicant is allowed to come on record, the interest of justice will be met.

9. Even otherwise, impleadment of the petitioner to the present proceedings would not cause any prejudice to the parties to the suit that has culminated into a preliminary decree which is now put in FDP.

Further, the interest the applicant claims over the schedule property can be treated in the present proceedings without prejudice to the interest of non-parties to the said sale. In these circumstances, considering the application, objections and materials on record, I am of the view that the applicant has made out sufficient grounds to implead him as respondent in the present petition. Accordingly, I answer point no.1 in the affirmative.

10. **Point No.2** : - In view of reasons on point No.1, I proceed to pass the following,

ORDER

**IA No.8 filed by the applicant U/O.I Rule 10
of C.P.C., is hereby allowed on cost of Rs.500/-.**

(Dictated to the Typist directly on the computer, typed by her, corrected by me and then pronounced in the open court on this the **11th Day of January, 2023.**)

**(Hanumanth Satwik)
Addl. Senior Civil Judge & JMFC.,
Magadi.**