



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

**Present:**

**Sri. Sandeep S. Reddy, B.A., LL.B.,**  
Addl. Sr. Civil Judge & JMFC., Magadi.

**DATED: THIS THE 4<sup>th</sup> DAY OF JANUARY, 2024**

**O.S.No.412/2021**

**Plaintiff** : Sri. Narasimhaiah,  
W/o. Lakshminarasimhaiah,  
Aged about 56 years,  
R/at: No.11, Alammanapalya Village,  
Chunchanakuppe Post,  
Tavarekere Hobli,  
Bangalore South Taluk.

(By **Sri. M.N.** Advocate)

--V/s--

**Defendant** : Sri. Narasimhamurthy G.,  
S/o. Ganganarasaiah,  
Aged about 34 years,  
R/at: No.26, Machohalli,  
Bapagrama Post,  
Dasanapura Hobli,  
Bangalore North Taluk,  
Bangalore - 91.

(D1 by **Sri. N.S.** Advocate)

**KARN410005882021****O.S. No. 412/2021(Or.)****ORDER ON IA NO.3 U/O.I R.10(2) of C.P.C.,**

The aforesaid the application is filed by the the plaintiff praying to implead proposed defendant No.2 & 3 in the aforesaid suit.

2. The aforesaid suit is for specific performance of contract and consequential reliefs.

3. The plaintiff has filed the aforesaid application contending that, he came to know through the written statement filed by the defendant that, the defendant had already sold a part of suit schedule property i.e., Sy.No.102/3. That, the plaintiff had got verified the documents and found that, a registered sale deed dated: 29.08.2020 was executed by defendant. That, defendant No.2 and 3 had illegally created a registered sale deed dated: 03.09.2021 vide document bearing No.SHR-1-02454/2021-22 stored at CD.No.SHRD794 in the office of Sub-Registrar, Shantinagara. Hence, the plaintiff has filed the aforesaid application praying to implead defendant No.2 and 3 who are necessary parties.

**KARN410005882021****O.S. No. 412/2021(Or.)**

4. The proposed defendant No.2 and 3 have filed the objections to the aforesaid application by admitting the sale deed dated: 30.09.2021 and have further stated that, the plaintiff was a consenting witness to the sale deed dated: 30.09.2021 and the plaintiff was very well aware of the suit schedule property being sold to the proposed defendants. That, the plaintiff affixing his signature as a consenting witness makes him a witness to the sale transaction. That, plaintiff does not have any locus standi to file the suit seeking enforcement of alleged agreement of sale and that the plaintiff is only entitled for the alternative relief of refund of money to which only the plaintiff and defendant are parties. That, the proposed defendants are the bonafide purchasers and they have paid valuable sale consideration amount. Hence, the proposed defendant No.2 & 3 are not liable to be made parties to the aforesaid transaction.

5. Heard learned advocate for plaintiff and proposed defendants on I.A.No.3.

KARN410005882021



O.S. No. 412/2021(Or.)

6. Considering the contentions of the parties, following points arise for my consideration.

1. Whether the plaintiff has made out a case for joinder of proposed defendant No. 2 & 3 as necessary parties in the aforesaid suit?
2. What order?

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

|            |   |                                          |
|------------|---|------------------------------------------|
| Point No.1 | : | In the affirmative                       |
| Point No.2 | : | As per final order<br>For the following, |

### **REASONS**

8. **Point No.1**:- The plaintiff has filed the aforesaid application by stating that, the land bearing Sy.No.102/3 had already been sold to the proposed defendants and that he came to know about the sale of the said land through the written statement filed by defendant.

9. The plaintiff has filed the aforesaid suit seeking for the relief of specific performance of contract against defendants. The plaintiff has

**KARN410005882021****O.S. No. 412/2021(Or.)**

sought to implead the proposed defendant as proper party to the aforesaid suit.

10. The proposed defendant on the other hand has objected to the said application by stating that, he has a bonafide purchaser and that the plaintiff was the consenting witness to the sale transaction held between plaintiff and defendants. The proposed defendant has further taken the contention that, the plaintiff had every knowledge about the execution of sale deed and he has no locus standi to get the proposed defendant impleaded in the aforesaid suit.

11. The contention of the plaintiff as per his affidavit is that, the defendant had fraudulently mis-lead the plaintiff and his brother and got obtained their signature at the time of registration by saying that he was obtaining the loan. The averments of plaintiff and defendant has to be proved and disproved during the evidence. The fact of plaintiff being a consenting witness to a sale deed and the fact of plaintiff pleading fraud cannot be decided without the evidence.

KARN410005882021



O.S. No. 412/2021(Or.)

12. The aforesaid suit is suit for specific performance. In a suit for specific performance the purchaser is a necessary party. The outcome of the suit would invariably effect the purchaser. The outcome of the suit would also result in hardship to the purchaser if he is not having knowledge of the same. At the same time if the plaintiff is not allowed to implead purchaser then there may be chances of multiplicity of proceedings. The Hon'ble Supreme Court of India in Vidur Impex & Traders Pvt. Ltd., V/s. Tosh Apartments Pvt. Ltd., (2012) 8 SCC 384 has stated as under;

***“1. The court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the court is necessary for effective and complete adjudication of the issues involved in the suit.***

***2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the court.***

***3. A proper party is a person whose presence would enable the court to completely, effectively and properly***

KARN410005882021



O.S. No. 412/2021(Or.)

*adjudicate upon all matters and issues, though he may not be person in favour of or against whom a decree is to be made.*

*4. If a person is not found to be a proper or necessary party, the court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.*

*5. In suit for specific performance, the court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.*

*6. However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restrain order passed by the court or the application is unduly delayed then the court will be fully justified in declining the prayer for impleadment.”*

In view of the aforesaid judgement of Hon’ble Supreme Court and also for the reasons discussed above, I answer point No.1 in the affirmative.

13. **Point No.2:-** In view of reasons on point no.1, and in the interest of Justice and equity, I proceed to pass the following,

KARN410005882021



O.S. No. 412/2021(Or.)

**ORDER**

**IA No.3 filed U/o. I Rule 10 (2) R/w. Sec.151 of CPC filed by the plaintiff praying to implead Sri. Y. H. Avinash Masti S/o. Y. C. Huchamastigowda and Smt. Megha K., W/o. Sri. Y. H. Avinash Masthi is hereby allowed and they are permitted to be added as defendant No.2 and 3 in the aforesaid suit.**

**The plaintiff is hereby directed to carryout amendment to the plaint.**

**The parties to bear their respective costs.**

(Dictated to the Typist directly on the computer, typed by her, corrected by me and then pronounced in the open court on this the **4<sup>th</sup> day of January, 2024.**)

**(Sandeep S. Reddy)**  
**Addl. Sr. Civil Judge & JMFC.,**  
**Magadi.**