



**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 15th DAY OF FEBRUARY, 2024
O.S.No.440/2022

Plaintiffs : Smt. Lakshamma & Ors.,
(By **Sri. S.D.** Advocate)

--V/s--

Defendant : Sri. Govinda @ Govindaiah & Ors.,
(D1 by **Sri. B.T.R.** Advocate)
(D2 & 3 **Exparte**)
(D4 & 5 by **Sri. C.K.R.** Advocate)

ORDER ON IA NO.2 U/O.I R.10(2) of C.P.C.,

The I.A.No.2 is filed by the plaintiffs U/O.1 R.10(2) r/w. Sec.151 of C.P.C., praying for permitting them to add proposed defendant No.4 & 5 and additional defendants in the aforesaid suit.

2. The aforesaid suit is for partition, separate possession and consequential reliefs.

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3. In the accompanying affidavit the plaintiffs state that, they came to know about the alienation of 'B' schedule property by the 3rd defendant in favour of defendant No.4 & 5 on 28.03.2022. That, they have obtained the relevant documents and have filed the aforesaid application seeking addition of defendants in the aforesaid suit. They further prayed that, the said proposed defendants are necessary parties to the aforesaid suit and prays for allowing the aforesaid application.

4. The notice was served on the proposed defendants and proposed defendants have filed objections. In the said objections they have contended that, the proposed application is frivolous and that they are not necessary parties to the aforesaid suit. That, they have purchased the schedule property from the defendants as stated in the plaint, but they contend that, the plaintiffs have no right. Further, they state that, they are in possession of the schedule property and plaintiffs have not made any grounds for allowing aforesaid application. Hence, they pray for dismissing the aforesaid application.

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5. Heard learned advocate for plaintiff and proposed defendants.

6. Considering the contentions of the parties, following points arise for my consideration.
 1. Whether the applicant has made out a case to add proposed party/defendant No.4 & 5 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 For the following,

REASONS

8. **Point No.1**:- The plaintiff has filed the aforesaid application U/O.I R.10 of C.P.C. The plaintiff has filed the aforesaid suit for partition, separate possession and consequential reliefs.

9. The plaintiff has stated in the accompanying affidavit that, the 3rd defendant had alienated schedule property on 28.03.2022 to the

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proposed defendant 4 & 5. The proposed defendant No.4 & 5 in their objections have not denied the said purchase. In fact, they have admitted the purchase of schedule 'B' property and they have further submitted that, they are in possession of the said schedule 'B' property.

10. The plaintiff has contended that, the aforesaid alienation had taken place on 28.03.2022 much before the filing of the suit by plaintiff. That, he was not aware of the said transaction at the time of filing of the aforesaid suit. That, he came to know about the said transaction recently and hence has filed the aforesaid application with an intention to avoid multiplicity of proceedings. He further states that, defendant no.4 and 5 are proper and necessary parties to the aforesaid suit.

11. The contention of the plaintiff is not rebutted by the defendants. In fact defendants have claimed that, they have purchased the schedule 'B' property that, they are in possession of the said property and that the plaintiff does not have any right or interest over the schedule 'B' property. From the contention of the proposed defendants it is clear

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that, they are disputing the rights of plaintiffs. The plaintiffs are claiming rights over schedule 'B' property which is presently claimed by proposed defendant No.4 & 5. Hence, there is a direct conflict of interest between plaintiff and defendant No.4 & 5. Hence, defendant No.4 & 5 are proper and necessary parties for proper adjudication of the aforesaid suit. Hence, I answer point No.1 in the affirmative.

12. **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,

ORDER

IA No.2 filed U/o. I Rule 10(2) R/w. Sec.151 of CPC by the plaintiff praying to add Sri. Ashwin S. Nayak and Smt. Rekha Nayak as as defendant No.4 & 5 in the aforesaid suit is hereby allowed they are hereby arrayed as defendant No.4 & 5.

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

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The parties to bear their respective costs.

Call on 18.03.2024.

(Dictated to the Typist directly on the computer, typed by her, corrected by me and then pronounced in the open court on this the **15th day of February, 2024.**)

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