

KARN410013402014



**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 16th DAY OF SEPTEMBER, 2022

O.S.No.450/2014

Plaintiffs

:-

1. Smt. Venkatalakshamma,
W/o. Late. Kodaiah,
Aged about 51 years,
R/at: Bachenahatti Village,
Kasaba Hobli, Magadi Taluk,
Ramanagara District.
2. Smt. Pushpa,
D/o. Late. Kodaiah,
Aged about 35 years,
R/at: No.75, 1st Main Road,
2nd Cross, Behind HVR
Kalyana Mantappa,
Magadi Main Road,
Bangalore – 79.

(By Sri. **K.B.V.**, Advocate)

--V/s--

Defendants

:-

1. Sri. K. Mudduraj,

Since dead by his L.Rs.,

(a) Smt. Savith Mudduraj,
W/o. Late. Mudduraj,
Aged about 37 years,

(b) Master Sumanth Yadav,
S/o. Late. K. Mudduraj,
Aged about 22 years,

(c) Master Abhishek Yadav,
S/o. Late. K. Mudduraj,
Aged about 20 years,

2. Sri. B. K. Maruthi,
S/o. Late. Kodaiah,
Aged about 37 years,

D1(a to c) & D2 are R/at:
Bachenahatti Village,
Kasaba Hobli, Magadi Taluk,
Ramanagara District.

(D1 by Sri. **M.S.N.**, Advcoate)
(D2 by Sri. **C.M.**, Advcoate)

ORDER ON IA No.11

The present suit is for partition and separate possession.

2. The present application has been filed by the applicant through GPA holder to implead her as defendant in the present suit. The applicant submits that she is the owner of item no.2 of the

suit schedule property. She purchased the suit schedule property vide sale deed dated: 15.12.2006 from defendant no.1. She is a bonafide purchaser of item no.2 of the suit schedule property. She is in possession of the suit schedule property. The plaintiffs have no right, title or interest with respect to item no.2 of the suit schedule property. The plaintiffs are aware about the sale of item no.2 of the suit schedule property in her favour. She is a proper and necessary party for effective adjudication of the present suit. Defendant no.1 and 2 in collusion with each other filed the present suit to harass her and to knock off her property. In this regard, the applicant prays as above.

3. In the present case the learned counsel for the plaintiff submitted no objection to allow the application. Further, in spite of giving sufficient opportunity to defendants to file objections, they failed and hence the objections of the defendants was taken as not filed.

4. Heard counsel for the proposed defendant. In spite of giving sufficient opportunity to the defendants to address arguments on the application, the defendants failed and hence the arguments of the defendants was taken as nil.

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

1. Whether the applicant shows that she is necessary party to be impleaded as defendant in the present suit?
2. What order?

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

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

REASONS

7. **Point No.1**:- It is the case of the applicant that she purchased item no.2 of the suit schedule property from defendant no.1 vide sale deed dated: 15.12.2006. She is the owner and possessor of

item no.2 of the suit schedule property. As such, she is necessary party to the present suit.

8. Having said this, the application reflects that the proposed defendant is an alienee of item no.2 of the suit schedule property. This being the case, considering the nature of the suit and the relief sought for and the questions that are required to be answered, I am of the view that the applicant is not necessary to determine the issues involved in the suit. In other words, the questions involved in the present suit can be decided even in the absence of the applicant. In this regard, it is befitting to refer the decision of the Hon'ble High Court of Karnataka between S. K. Lakshminarasappa deceased by his LRs V/s. B.Rudraiah cited in 2013 (1) KCCR 672 (DB), wherein Hon'ble Court held thus;

“In a suit for partition, at the stage of passing of preliminary decree for partition, the only the question that needs to be adjudicated by the trial court is, whether the property in question is a coparcenary property or a joint family property and if so, what is the share to which these family members are entitled to. For the declaration of such shares,

the presence of alienees is not necessary. Even in their absence the suit of the plaintiff can be adjudicated upon and their presence is in no way necessary for the court to determine the question involved in the suit. It is only after declaration of shares, at the stage of dividing the property by metes and bounds and putting them in possession of the extent of the share so declared the character, validity and the nature of alienation have to be taken note of. It is at that stage, it is necessary to here the persons who are claiming title through such members of the family and who have parted with valuable consideration and who are in possession of the property.....”.

In view of the law laid down by Hon'ble Court and for the above said reasons, I am of the view that the applicant failed to show that she is necessary party to be impleaded as defendant in the present suit. As such, considering the application and the pleadings, I am of the view that the applicant failed to show that she is necessary party to be impleaded as defendant in the present suit. Accordingly, I answer point no.1 in the negative.

9. **Point No.2** : - In view of reasons on point No.1, I proceed to

pass the following,

ORDER

**IA No.11 filed by the applicant U/O.I Rule
10(2) of C.P.C., is hereby rejected on cost of
Rs.100/-.**

(Dictated to the Typist directly on the computer, typed by her, corrected by me and then pronounced in the open court on this the **16th Day of September, 2022.**)

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