

## **I.A.NO.XIV**

APPLICANT: Smt. Shamala

V/s.

OPPONENTS: K.N. Vijayashankar and others

|    |                                                                   |                             |
|----|-------------------------------------------------------------------|-----------------------------|
| 1. | Provision under which the application is filed                    | U/Order 1 Rule 10(2) of CPC |
| 2. | Relief sought for                                                 | For impleadment             |
| 3. | The date on which the application is filed                        | 06-02-2021                  |
| 4. | Number of the application                                         | I.A.No.XIV                  |
| 5. | The date on which the objections are filed by different opponents | 17-04-2021                  |
| 6. | The date on which the orders were passed on the said application. | 20-02-2024                  |

### **:ORDER ON I.A.No.XIV:**

The plaintiffs have filed the present application to implead on record the proposed defendants as defendants No.10 to 21 in the above case in the interest of justice and equity.

2. The application is supported by an affidavit sworn to by the plaintiff No.1. In the affidavit, the plaintiff No.1 stated that the suit is for partition and separate possession of the legitimate right, title, interest and possession of the plaintiffs' over the the suit schedule properties and there is no partition of the same between them and their brothers. The plaintiffs further stated that the clandestine transactions have been done by the

defendants with an intention to deprive the rights of the plaintiffs and the Assistant Director of Town Planning, Tumakuru has also permitted formation of sites though he ought not to have granted permission for the same. That apart, even if the sites were formed, the alienation could not have taken place exclusively without the consent of the plaintiffs.

3. The plaintiff No.1 further stated that at the time of filing of the suit, it was pleaded that the alienation has taken place in respect of immovable properties which were agricultural lands. It is further stated that sites have been now formed and the said sites are explicitly provided to the purchasers of the sites under separate sale deeds and the said purchasers have not been made parties to the proceedings. The plaintiff No.1 further stated that in a suit for partition every person who is purchaser is a necessary party and the suit would be rendered bad for non-joinder of necessary parties if the said parties are not impleaded. The plaintiff No.1 further stated that in order to avoid such a contingency, the present application is made by the plaintiffs.

4. The proposed defendant No.11 filed objections to the application and submitted that the application is false, frivolous, vexatious and that the same is not maintainable under law or on facts. It is further submitted that the suit of the plaintiffs for partition and separate possession by holding that the alienation made by the

defendants are no binding on the share of the plaintiffs with respect to the suit schedule properties does not arise. It is further submitted that the proposed defendant No.11 is not a coparcerner to the family of the plaintiffs and defendants and is therefore not a necessary party to the present suit. It is also submitted that the property purchased by the defendant No.11 is not the subject matter of the suit and as such the present application seeking impleadment of the proposed defendant No.11 is not justified. It is also submitted that the application is devoid of merits and deserves to be dismissed. Hence it is prayed that the application be dismissed.

5. The proposed defendant No.21 filed objections to the application and submitted that the application is false, frivolous, vexatious and not maintainable under law or on facts and therefore the application filed by the plaintiffs is liable to be dismissed in limine. The proposed defendant No.21 denied the entire contents of the affidavit filed by the plaintiffs in support of the I.A. and submitted that the application filed by the plaintiffs does not contain particulars about the property derived by the proposed defendants, their survey numbers, purchaser of the property. Since the suit is filed in the year 2018, the plaintiffs have full knowledge of formation of the above layout by taking necessary permission from the concerned authorities and therefore the present

application filed by the plaintiffs being devoid of merits deserves to be dismissed.

6. Heard both sides on the application and perused the materials on record. The counsel for the plaintiffs in support of the application has furnished copies of sale deeds dated 17/09/2012, 05/07/2014, the Gift Deed dated 26/06/2018, Sale Deed dated 16/01/2019, Mortgage Deed dated 18/03/2015, Sale Deed dated 23/01/2018, Sale Deed dated 14/12/2009, Sale Deed dated 22/08/2012, Sale Deed dated 30/11/2013, Mortgage Deed dated 01/08/2016, Mortgage Deed dated 04/03/2015, Sale Deed dated 18/09/2013 and Sale Deed dated 14/09/2017.

7. The following points arise for my consideration:

1. Whether the proposed defendants/opponents are proper or necessary parties to the present suit?
2. What order?

8. My findings to the above points are as follows;

POINT No.1 : In the Negative.

POINT No.2 : As per the final order  
for the following;

**: REASONS:**

9. **POINT No.1:-** From a perusal of the affidavit filed in support of the IA., it appears that the plaintiffs have filed the present application seeking impleadment of the proposed defendants No.10 to 21 as necessary

parties to the present suit on the premise that they purchased sites formed after illegal alienation of the suit schedule properties. The proposed defendants 11 on the other hand opposed the application on the ground that the proposed defendant is not a co-parcener and as such is not a necessary party to the present suit. The proposed defendant No.11 also contended that he has not purchased the property involved in the subject matter of the suit and as such the application of the plaintiffs being devoid merits deserves to be dismissed. The proposed defendant No.21 opposed the application mainly on the premise that the application filed by the plaintiffs does not disclose particulars of the property derived, the survey numbers of the same, the extent and the date of their purchase as well as the name of the said purchasers.

10. At this stage, it is relevant to refer to Order 1 Rule 10(2) of CPC., under which the present application is made. As per Order 1 Rule 10(2) of CPC., the Court may at any stage of the proceedings, order that the name of any party improperly joined as defendant be struck out; or order the addition of any person who ought to have been joined as defendant, or whose presence before the Court may be necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Accordingly, the Court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or

proper party. A “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a “necessary party” is not impleaded, the suit itself is liable to be dismissed. A “proper party” is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favor of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff.

11. In the light of the observations made above, it is now relevant to find out whether proposed defendants are proper parties or necessary parties to the present suit so as to enable this court to effectually and completely adjudicate the matter in controversy.

12. A perusal of the materials on record would clearly indicate that the plaintiffs have filed the present suit for the relief of partition and separate possession of the suit schedule properties. They contend that the proposed defendants are necessary parties by virtue of the proposed defendants having purchased sites from and out of the suit schedule properties after their illegal conversion. Be that as it may, the fact remains that the proposed defendants as per the plaintiffs are the

purchasers of undivided interest, as the plaintiffs contend that there is no partition of the suit schedule properties between them and their brothers till date. Further, the proposed defendants also do not dispute that they purchased sites carved out from the suit schedule properties. Under the circumstances, it is quite clear that the proposed defendants are purchasers of the undivided interest of the plaintiffs in the suit schedule properties.

13. In this connection, it is relevant to refer to the judgment of the Hon'ble High Court of Karnataka in the matter between Vinayaka V/s. Gadigevva @ Neelavva in W.P.No.106032/2022 where the Hon'ble High Court of Karnataka vide order dated 03/08/2023 at paragraph No.4 therein observed as under.

“4. It is quite strange to know that the petitioner who is purchaser of undivided interest who has no locus in a partition suit has ventured in challenging the order passed on amendment application. While drawing a preliminary decree, a stranger – purchaser has no say in the suit. Merely because, he is impleaded in the suit, will not give a right to him to dictate as to how the suit has to be proceeded with. His rights, if any, in an undivided interest has to be worked out in final decree proceedings”.

14. From a perusal of the ratio laid down by the Hon'ble High Court Karnataka in the above judgment it is

clear that the purchaser of an undivided interest has no locus - standi in a suit for partition at the time of drawing of the preliminary decree. Further his rights, if any, in an undivided interest in the suit schedule properties has to be worked out in the final decree proceedings. Since the proposed defendants herein are admittedly purchasers of undivided interest in the suit schedule properties, the said proposed defendants by virtue of the ratio laid down by the Hon'ble High Court of Karnataka in the judgment referred above have no locus-standi in a suit for partition during the preliminary decree proceedings as the case herein. Therefore the proposed defendants in the opinion of this court are neither necessary parties nor proper parties to the present suit and therefore the application filed by the plaintiffs to implead the proposed defendants as defendants No.10 to 21 being devoid of merits deserves to be dismissed. Hence, point No.1 is answered in the negative.

15. **Point No.2:**In view of the findings of this court on point No.1, this Court proceeds to pass the following;

**: ORDER:**

I.A.No.XIV filed by the plaintiffs under Order I Rule 10(2) of CPC is hereby dismissed.

No order as to costs.

**Prl. Senior Civil Judge & J.M.F.C.,  
Kunigal.**