



IN THE COURT OF THE ADDL.CIVIL JUDGE AND
JMFC., Sira

KUM. SHARMILA E.J., B.A.LL.B., LL.M.,
Addl. Civil Judge & JMFC., Sira.

Dated this the **18th day of August 2025**

O.S. No.358/2015

Plaintiffs : K. Nagaraju (Dead Rept. By Lrs)
Smt.Suprabha and one another

(By Sri. P.B.S., Advocate)

-V/S-

Defendant : H.S Ramesh

(Def By Sri. H.B.V., Advocate)

-V/S-

PARTIES TO THE I.A. NO. VIII

Applicant: Karnataka Bank Ltd.,
Represented by its manager,
Shivarama Naika

-V/S-

Opponent/s: K. Nagaraju, Dead by LR's
1. Smt.Suprabha W/o. Late
K.Nagaraju, Aged about 56 years,
R/at Sapthagiri Extension, Sira
town,



2. Kum.Hamsshree D/o. Late
K.Nagaraju, A/a 12 years,
Minor who is represented by
her N/G I.e here mother by
name Suprabha LR.No.1
R/at Sapthagiri Extension,
Sira town,

**ORDER ON I.A. No. VIII UNDER ORDER 1 RULE 10(2) OF
CODE OF CIVIL PROCEDURE, 1908**

This application is filed by the applicant under Order I Rule 10(2) of the Code of Civil Procedure, 1908 seeking impleadment as defendant No. 2 in the present suit.

2. It is the case of the applicant that the plaintiff has filed the present suit against defendant No. 1 seeking the relief of specific performance of contract in respect of the suit schedule property. The applicant contends that defendant No. 1 had availed two loans of Rs. 1,65,000/- and Rs. 1,35,000/- from the applicant bank by mortgaging the suit schedule property under a registered mortgage deed dated 08.10.2012, for the purpose of agricultural operations. It is stated that the defendant No. 1 has defaulted in repayment and has become a chronic defaulter. The applicant has already filed a separate



suit for recovery in O.S.No.244/2024 before the Hon'ble Senior Civil Judge and JMFC, which is pending adjudication.

3. It is further averred that the fact that defendant No. 1 had executed an agreement of sale infavour of the plaintiff in respect of the suit schedule property came to the knowledge of the applicant only recently. The applicant asserts that it holds the first charge over the suit property and unless the dues are cleared, no person can claim any right or interest over the same. Therefore, the applicant submits that it is a necessary and proper party to the present suit, and seeks impleadment as defendant No. 2. It is also contended that no prejudice would be caused to the plaintiff if the application is allowed and hence prays to allow the application.

4. Per contra, the learned counsel for the plaintiff has filed objections to the application, contending that the application is not maintainable as the present suit is one for specific performance of contract. It is further averred that defendant No. 1 has specifically stated in the agreement of sale that he had borrowed a loan from the applicant and that he would discharge the said loan at the time of execution of the sale deed infavour of the plaintiff.



5. It is contended that if the applicant has any lien or charge over the suit schedule property, the appropriate remedy is to initiate a separate proceeding, which has already been done by the applicant in O.S.No.244/2024. Therefore, the applicant is neither a necessary nor a proper party to the present suit for specific performance, and accordingly, the plaintiff prays for dismissal of the application.

6. That, on hearing the learned counsels for both sides on the instant interlocutory application, the point that arises for consideration is as follows:

1. Whether the application filed by the proposed defendant No. 2 under Order I Rule 10(2) of the Code of Civil Procedure, seeking impleadment as defendant, deserves to be allowed?

2. If so, what order?

7. The findings of this Court on above points are as under

Point No.1 : In the Negative.

Point No.2: As per final Order for the following



REASONS

8. Point no. 1: Order I Rule 10(2) of the Code of Civil Procedure, 1908 empowers the Court to add any person as a party at any stage of the proceedings if their presence is necessary for the Court to effectively and completely decide the issues involved. Although the plaintiff, being dominus litis, has the initial choice of whom to sue, this right is not absolute. If the Court finds that the presence of a person is essential to avoid incomplete or ineffective adjudication, such a person can be added as a party.

9. A necessary party is one in whose absence no effective order can be passed. If such a party is not added, the suit itself may fail. A proper party is one whose presence helps the Court decide the matter more effectively. The Court does not have the power to add persons who are neither proper nor necessary. It is also well settled that merely having an interest in the property is not enough. the key consideration is whether the person's legal rights may be affected by the outcome of the suit.



10. In the present case, the proposed Defendant No. 2 has sought impleadment on the ground that it holds a prior charge over the suit schedule property by virtue of a registered mortgage deed dated 08.10.2012, pursuant to loans granted to Defendant No. 1. It is contended that Defendant No. 1 is a chronic defaulter and that the applicant's interest in the property may be affected if the relief of specific performance is granted in favor of the plaintiff without impleading the applicant. The applicant has also filed a separate suit for recovery of the said loan in O.S.No.244/2024 before the Hon'ble Senior Civil Judge and JMFC, concerning the same suit schedule property, and has produced a certified copy of the plaint of the said suit. The plaintiff, however, opposes the application, contending that the loan liability was acknowledged in the agreement of sale and that the applicant's claim can be adjudicated in the separate suit.

11. On careful Perusal of the records, it is evident that the applicant's claim arises from a separate and distinct cause of action, namely recovery of the loan and enforcement of the mortgage, which is already pending in O.S.No.244/2024. The present suit is for specific performance



of contract, independent of the loan recovery proceedings. The applicant's interest in the suit property is primarily financial, arising from a mortgage and loan agreement. The specific performance suit concerns the contractual obligation between the plaintiff and Defendant No. 1 during the pendency of the suit have executed the registered sale plaintiff and Defendant No. 1. The agreement of sale clearly acknowledges the loan, which means the bank's rights are already protected under the contract. It specifically requires the defendant No.1 to pay off or adjust the outstanding loan and interest in favor of the bank when the sale deed is executed. This ensures that the bank's mortgage or financial interest in the property is not affected, without the bank needing to be a party to this suit. Because of this clause, the plaintiff cannot get the property free from the mortgage without first settling the loan. This guarantees that the bank's rights remain intact. Any effect on the bank's interest from granting specific performance is already taken care of by the agreement. Therefore, the Court can fully decide the suit against Defendant No. 1 without impacting the bank. Even if the Court grants specific



performance, no order in this suit can change or extinguish the bank's mortgage rights.

12. Furthermore, no remedy in the present suit would lie against the proposed Defendant No. 2, and the Court cannot pass an effective order directly affecting the rights of the applicant. Any dispute regarding the mortgage or recovery of dues is already subjudice and can be adjudicated independently in O.S.No.244/2024. The fact that the applicant has filed a separate suit and produced a certified copy of the plaint reveals that the applicant has an independent remedy available.

14. Therefore, despite the fact that the property is the same, the proposed Defendant No. 2 is neither a necessary nor proper party for adjudication of the present suit. Allowing the application would not serve the ends of justice and could unnecessarily complicate and delay the proceedings. Accordingly, Point No.1 is thus answered in the Negative.

15. Point No.2 :- In view of aforesaid discussions, this Court proceed to pass the following ;



ORDER

The application I.A.No.VIII filed by
the applicant U/o 1 Rule 10 (2) of CPC is
hereby dismissed.

No order as to costs.

(Dictated to the Stenographer, directly computerized by her, then corrected, printout taken, signed
by me and pronounced in the open court on this the **18th day of August 2025**)

sd/-

(Sharmila E.J.)
Addl. Civil Judge & JMFC.,
Sira.