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IN THE COURT OF PRL. CIVIL JUDGE & JMFC., AT SIRA

Dated this the 26th day of October 2021

PRESENT :Smt. ASHA K.S.
B.A.L., LL. B.,
Prl. Civil Judge & JMFC.,
Sira

O.S.NO. 235/2015

PLAINTIFF : V. Manjunath

/Vs/

DEFENDANTS : Suresh & another

Parties in I.A. U/Or. I Rule 10(2) CPC

APPLICANT : Naveen kumar V.S.,
S/o. Suresh,
Aged about 23 years,
R/o. Hanumanthanagara,
Kallambella Hobli,
Sira Taluk,

/Vs/

OPPONENT : Manjunath V.

ORDERS ON I.A. No.7 FILED U/OR. I RULE 10(2) CPC

This is an application filed by the Applicant U/Or. I Rule 10(2) of CPC with a prayer to implead him as defendant No.3 in the suit.

2. In the affidavit annexed to the application, the applicant has stated that the plaintiff has filed suit for the relief of permanent injunction against his father. The health of his father is not in good condition and he is not in a position to attend the court regularly. He is also residing in the schedule property with his father. Hence, prays to implead him as defendant No.3 in the case.

3. The plaintiff has filed objections and contended that in a suit for permanent injunction, the plaintiff is dominus litis (master of his suit) and he can choose the opponent those who interfered with his lawful possession. In the case on hand, defendant has actually interfered with his

possession. Therefore, he has filed suit against him. The plaintiff at any stretch of imagination cannot fight against his wish or against any other stranger, therefore, the proposed defendant is not necessary party.

4. It is further contended that there is no cause of action against the proposed defendant and his presence is not necessary for adjudication of case on hand. If at all the proposed defendant has any right, then he can workout in a fresh suit. There are no merits in the application and prays to dismiss the application.

5. The following points that arise for consideration:

1. Whether the applicant has made out sufficient grounds to allow I.A. No.7?

2. What order?

6. Heard on both side and perused the records.

7. The above points are answered as under;

Point No.1: In the **Negative**,

Point No.2 : **As per Final Order**

for the following;

REASONS

8. Point No.1: The plaintiff has filed the suit for permanent injunction in respect of schedule property. Now the applicant has filed this application to implead him as defendant No.3.

9. Perused the record. In the affidavit, the applicant has stated that defendant No.1 is his father and due to his ill-health, he is not in a position to attend the court. Being a son of defendant No.1, he has every right to participate in the case on hand. The plaintiff has objected on the ground that, there is no cause of action against the proposed defendant.

10. On perusal of record, it is noticed that, plaintiff has filed suit against the defendants No.1 and 2. In the cause of action also, the plaintiff has clearly stated that defendants have tried to interfere with his possession over the schedule

property. In the plaint, the plaintiff has nowhere stated about the interference of proposed defendant. In the plaint and cause of action, the plaintiff has clearly stated that, the defendants tried to interfere with the plaintiff's possession over the suit schedule property. This aspect clears that, there is no allegation against the proposed defendant. The plaintiff is not seeking any relief against the proposed defendant.

11. In any suit, it is the right of the plaintiff to choose his right against he wish. In the case on hand, the plaintiff has already chosen his opponents as defendants No.1 and 2 only. He sought relief against defendants No.1 and 2. According to plaintiff and plaint averments, there is no interference by the proposed defendants. It is not title suit or partition suit to compel the plaintiff to implead all the persons who are interested in schedule property. In a suit for injunction, the possession of the plaintiff and interference by the defendants has to decide. The burden is on the plaintiff to prove his possession over the schedule property as on the date of suit

and interference by the defendants. These aspects also clear that there is no role of proposed defendant in this case. To decide the issue involved in this case, the presence of proposed defendant is not necessary.

12. In the affidavit, the proposed defendant has stated that his father is not in a position to attend the case. For this, there is an other procedure to represent his father. Representation is different from adding as defendant in the court proceedings. As per procedure prescribed in the civil procedure code, the proposed defendant can approach the court to represent his father. The reason assigned in the affidavit is not proper to allow the application. Accordingly, this point is answered in the **Negative**.

13. Point No.2: In view of finding on Point No.1, this court proceed to pass the following;

ORDER

The Application filed by the Applicant
U/Or. I Rule 10(2) of CPC is hereby rejected.

(Dictated to the stenographer on computer, computerized and
printout taken by her, then corrected, singed and pronounced
by me in the open Court on **26.10.2021**)

(ASHA K.S.)

Prl.Civil Judge & JMFC.,
Sira