

KAUK510015742022



Presented on : 28-07-2022

Registered on : 28-07-2022

Decided on : 04-12-2025

IN THE COURT OF CIVIL JUDGE & JMFC, HALIYAL
AT: HALIYAL, UTTARA KANNADA

Dated this 04th day of December, 2025

PRESENT

Smt. Geeta. B.A.LL.B (Hon's) LL.M.,
Civil Judge and JMFC, Haliyal

ORIGINAL SUIT NO.93/2022

BETWEEN:

1. Bhavakayee Devi Devastan Trust
Committee, Niralaga and others.

.....Plaintiffs

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

AND:

1. Yallari Masanu Kadam,
Age: 57 years, Occ: Agriculture,
R/o. Niralaga, Tq: Haliyal and others.

....Defendants

(D-1 & 2 By Sri. S.R.H, Advocate)
(D-3 Exparte)

I.A.No.VII

**Applicants/P.Dfts : Pishling S/o Govind Garadolkar
and others.**

-Vs.-

**Opponents/Plfs : Bhavakayee Devi Devastan
Trust Committee, Niralaga and
others.**

ORDER ON I.A.NO.VII

The proposed defendants have filed I.A No.VII under Order 1 Rule 10 of C.P.C., praying to permit them to implead as defendant no.4 to 23 in the suit in the ends of justice and equity.

2. In the affidavit, the proposed no.10 stated that, he along with 20 others are residents of Niralaga and devotees of Bhavakayee Devi have filed present application to implead themselves as defendants in the present suit. It is stated that, the suit property is an agricultural land bearing R.S No.59/1 measuring 1 acre situated at Niralaga Village which was given to Bhavakayee Devi Temple for its maintenance and the legal heir of Deshpande family was appointed as manager of the suit property. The defendant no.1 has purchased suit property illegally knowing well that, suit property is kept for temple. The defendant no.2 is the son of defendant no.1 and the defendant no.1 has transferred suit property in the name of defendant no.2 and the

defendant no.3 is the existing legal heir of Deshpande family. Originally, the legal heir of Deshpande family one Smt. Mangalabai was looking after the suit property and she sold the suit property to the defendant no.1. The suit property is open land used for Jatra purpose of Bhavakayee Devi. The defendant no.1 and 2 colluding with each other have filed a false complaint against the elders and other residents of Niralaga Village and the same came to be dismissed. As the proposed defendants and other residents were afraid of criminal case did not implead themselves in the present suit at the earlier stage. Now the criminal case is closed and acquitted, the residents and devotees are intending to implead themselves in the present suit to adjudicate the matter in proper manner. It is stated that, the defendants are trying to misguide the Court by placing the wrong and false evidence. If the proposed defendants are impleaded in the suit as parties, they will put forth the true and real facts before the Court for proper adjudication of the matter. If the proposed defendants are permitted to implead in the present suit, no hardship will be caused to the other side, on the contrary, they will be put to hardship. With these contentions, the proposed defendants prayed to allow the application.

3. The advocate for plaintiffs submits no objections to I.A No.VII. The counsel for defendant no.1 and 2 filed objections to I.A No.VII contending that, suit filed by the plaintiffs is for declaration that, the sale deed executed by Smt. Mangalabai

Deshpande in favour of the defendant no.1 and gift deed executed by the defendant no.1 in favour of defendant no.2 is not binding on the plaintiffs and also for consequential relief of injunction restraining the defendants from creating any third party interest over the suit property. The plaintiffs have claimed that, they have formed trust in the name of Bhavakayee Devi Devastan Trust Committee, Niralaga saying that, they got registered the Trust, however, the plaint is silent regarding the existence of the registered Trust deed. Such being the facts, the suit in the present form is illegal and they are claiming right, title and interest over the suit property, without there being any right and title. Further, the relief sought by the plaintiff will not affect the applicants to implead them as parties to the proceedings. The application is silent regarding the purpose of impleading them as parties to the suit and nothing is stated regarding the facts that, in what way the rights of the applicants will be affected and the presence of applicants is necessary to dispose off the suit effectively and judiciously. Further, nothing is whispered to the effect that, they are members of plaintiffs' Trust. Further, the suit is not filed in representative capacity. Therefore, the application deserves to be dismissed. The contention that, presence of applicants is necessary to enable the Court to adjudicate the matter effectively and questions involved in the suit. The applicants have no right or interest over the suit property. The test for necessary parties is that, there must be a right to some relief against such party in respect of controversies involved in the proceedings or no

effective decree can be passed in their absence. Only the persons whose presence before the Court is necessary in order to enable the Court to pass orders effectively and completely, they have to be impleaded as parties. Therefore, the applicants are not either necessary or proper parties. With these contentions, the defendant no.1 and 2 prayed to reject the application.

4. Heard both counsels and perused the records.

5. Now the points that arise for consideration are as under;

1. Whether applicants have made out grounds to impead them as defendants?

2. What order?

6. Answers on 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:-** The plaintiffs have filed this suit contending that, they are members of Bhavakayee Devi Trust and suit property is located just outside the Village and is in the name of Temple for its wahivat. The Manager of the suit property i.e. late Smt. Mangalabai K. Deshpande was without any power or right to

sell said property has sold it to defendant no.1 on 07.05.1988. Now the defendant no.1 gifted it to his son defendant no.2 by executing registered gift deed dated 24.12.2019. Therefore, the plaintiffs prayed to declare the sale deed dated 07.05.1988 and gift deed dated 24.12.2019 as not binding on Shree Bhavakayee Devi Temple or its devotees. The plaintiffs also sought the relief of permanent injunction restraining the defendants from alienating, constructing, mortgaging, changing the nature or creating any charge over the suit property. Now the case is at the stage of plaintiffs evidence and proposed defendants have filed this application praying to implead them as parties to the suit. The plaintiffs submitted no objections to said I.A but, the defendant no.1 and 2 have filed objections stating that, the proposed defendants are not either necessary or proper parties for adjudication of this suit.

8. On perusal of plaint averments and the reasons in the affidavit filed in support of I.A No.VII, it is clear that, the proposed defendants have no right, title or interest over the suit property and also they have not stated that, they are members of the plaintiffs' Trust. Under such circumstances, they have no existing right in the suit property and also they have no sale regarding suit. Further, the applicants themselves stated that, they have afraid of criminal case and they have not impleaded as parties to this suit at the initial stage of the suit and now the criminal case is disposed off and they are intending to implead themselves as

parties to this suit. The contention of proposed defendants itself proves that, they have no interest in the suit property. Further, the dispute is between the plaintiffs' Trust and proposed defendants have no interest in the suit property. Therefore, the presence of proposed defendants is not necessary for complete adjudication of the matter. The proposed defendants are either necessary or proper parties for adjudication of this suit. Therefore, they cannot be impleaded as parties to this suit. If the proposed defendants are impleaded, it will cause undue delay in disposal of the suit. Therefore, the proposed defendants have not made out grounds to implead them as parties to this suit. Hence, **I answer Point No.1 in the Negative.**

9. The counsel for the defendant relied on the judgment reported in **Kasturi vs I.M. Permal and others AIR 2005 SC 2813**, the Hon'ble Apex Court held that, a third party or a stranger to the contract cannot be added as to convert a suit of one character into a suit of different character. This addition, if allowed, would lead to complicated litigation by which the trial and decision of serious questions which are totally outside the scope of suit would have to be gone into.

10. **POINT NO.2** :- In view of discussion on Point No.1 and for the reasons stated therein, I proceed to pass the following;

ORDER

I.A.No.VII filed by the proposed defendants under Order 1 Rule 10 of C.P.C., is hereby rejected.

No order as to costs.

For further chief of PW.1, call on 8.1.2026.

(Dictated to the Stenographer directly on system, typed by her, then corrected, signed and pronounced by me in the Open Court on this the **4th day of December, 2025**)

**Sd/-
(Geeta)
Civil Judge & JMFC.,
Haliyal**