

**ORDERS ON I.A.NO.VII**

1. One Sri.Shankar Venktesh Kabber and four others have filed this application by invoking the provisions of Order I Rule 10(2) of C.P.C. seeking to implead them in this suit as defendant No.2 to 6.

2. In accompanying affidavit it is stated that, one Sri.Bhimappa is the head of their family and Sri. Subbappa is their grandfather. That they have cultivating the suit property since the period of their ancestors. After the demise of said Subbappa, his sons namely Venktesh, Bhimappa, the plaintiff namely Tirupati and Govindappa have been cultivating the suit property. Such being the

case, the plaintiff alone has filed this case. That it is necessary to implead them in this suit. It is further stated that all the aforesaid four sons of Late Sri.Subbappa have been in the separate possession and cultivation of one acre twenty guntas each (01-20-00, A-G-A) out of 06-00-00. Though the plaintiff had agreed to file the instant suit along with them and also executed a consent deed in that regard, he has now denied to include them in this suit. Hence the application.

3. Per contra, counsel for the plaintiff has filed objections by contending that the application is not maintainable and that the party cannot pray to implead them in the suit as plaintiffs. That the proposed party can institute the independent suit. It is further contended that there is no proper description of cause of action which is connected to this case.

4. Having heard both the sides, the following points arise for the consideration of this Court.

*1. Whether the applicants need be impleaded in this suit as defendant No.2 to 6?*

*2. What Order?*

5. Answers 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**

6. **POINT NO.1:** The plaintiff has filed this suit seeking the relief of perpetual injunction against the defendant seeking to proscribe the defendant and her men from interfering with his possession and enjoyment of the suit schedule property in any manner. It is the assertion of the applicants/proposed defendants that the plaintiff ought to institute this suit along with them and he had executed one consent deed in that regard. That all the four sons of Late Sri.Subbappa have been cultivating the suit property to the extent of 01-20-00 (A-G-A) each. At one stretch the version of the applicants seems to be legitimate since the plaintiff has cited the entire 06-22-00 (A-G-A) of land as suit schedule property. Nevertheless the burden is on the plaintiff to demonstrate that he is in the possession of entire extent of such land. The applicants though aver that the sons of said Subbappa are in the separate possession of 01-20-00 each, they have not placed any such documents on record. Besides the cause of action especially in a suit for perpetual injunction is a privy to the parties. Cause of action to institute a suit for perpetual injunction is recurring in nature. More particularly in such a suit, the plaintiff being Dominus Litus, he cannot be compelled to contest the suit against the party against whom he does not wishes to. Primarily, the applicants cannot be impleaded in the instant suit as defendants since they intend to

contest the case as being plaintiffs. That apart they should have similar or identical cause of action against the defendant or the cause of action which has arisen for the plaintiff to institute this suit also involves them or the same act of the defendant is equally prejudicing their rights as of the plaintiff or else the Judgment which would be passed in this case will have bearing on the applicants. Thus none of the aforestated points in favour of the applicants, they cannot be impleaded in this suit. For the foregoing reasons and discussion point No.1 is answered in the ***Negative***.

7. **POINT NO.2:** With these observations this Court proceeds to pass the following:

**: ORDER :**

I.A.No.VII filed by the applicants/proposed defendant No.2 to 6 under Order I Rule 10(2) read with Section 151 of C.P.C. is hereby dismissed.

No order as to costs.

Civil Judge & JMFC.,  
Mundgod.

Counsel for the complainant has filed an application u/sec 311 of CrPC, seeking to recall the complainant who was examined as PW1 for the purpose of his cross examination.

In the application it is stated that, the case was posted for cross examination of the complainant on 21-06-2024. Since the complainant was out of station on the said day on his personal work, he could not be present before the court on the given date of hearing. Noting the same, this court was pleased to nil the cross examination of the complainant by recording as not tendered ' it is stated that the absence of the accused on the said date was not intention and it is very much necessary to subject the complainant for the cross examination, it is pleaded that no harm will be caused to the other side if the IA is allowed.

Counsel for the accused filed objections stating that, despite according sufficient opportunities and time complainant failed to present before the court, hence this court has taken that complainant has not tendered himself for the test of cross examination. This application filed only to delay the matter, hence application may be rejected.

Heard the both side.

I have gone through the proceedings of the case. It can be seen that, complainant has consistently failed to appear before the court and tendered himself for cross examination and now he has come up with this application seeking to recall him for cross examination. It is to be noted here that, accused has not demonstrated sufficient and genuine reasons for his absence on the given dates of hearing. He simply states that he was out of station. Nevertheless u/sec. 311 of CrPC empowers the

court, to summon, examine, recall or reexamine any person at the any state of trial or inquiry. It complainant is not allowed to subject himself for test of cross examination, the probative value of his evidence will be less and it maybe fatal to his case, moreover cross examination is a tool to elicit the matters in controversy from the mouth of the witnesses. Hence the application filed by the complainant u/sec. 311 of CrPC needs to be allowed. Accordingly this court proceeds to pass the following,

**ORDER**

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**Civil Judge and JMFC.,  
Mundgod.**



Heard the counsel for petitioner.

For order kept by

**ORDERS ON APPLICATION FILED U/S. 23 P.W.D.V.ACT**

**1.** The petitioner has filed this application U/S. 23 of the Protection of Women from Domestic Violence Act, 2005 seeking interim maintenance of Rs. 6,000/- per month from the respondent No.1.

**2.** In the accompanying affidavit it is stated that, the respondent No.1 is her husband

and due to their wed-lock they are blessed with 4 children by name Gouramma, Akshatha, Chinnamma and Kaveri. That two of her daughters are married and other two namely Chinnamma and Kaveri and pursuing their education. She prays to direct the respondent No.1 to pay interim maintenance for sustenance of herself and her two kids. It is further stated that if the interim maintenance is not granted then she and her family will suffer from starvation and will become destitute. On the other hand no hardship will be caused to the respondent No.1 if he is directed to pay the interim maintenance. Since the disposal of the main petition takes time she prays to grant interim maintenance in her favour at this stage.

**3.** The petitioner in support of her case has produced one photograph, photocopy of her Aadhar card, office copy of the legal notice, postal receipt and postal acknowledgment, photocopy of birth certificate of her two daughters, progress reports, photocopy of their Marriage Registration Certificate and reply given by the respondent No.1 to the legal notice. After considering the materials on record, it prima

facie appears that the Petitioner is the legally wedded wife of the Respondent No.1.

**4. Section 23(2) of the P.W.D.V. Act, 2005** empowers the Magistrate to pass ad interim ex parte orders if the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent. As per the aforesaid Section, there is no impediment for granting the interim maintenance to the Petitioner before the appearance of the Respondent. This Court makes it very clear that the order passed on this day is subject to the orders which will be passed on I.A. No.1 after appearance of the respondent no.1 by considering his objections. When the respondent No.1 have sufficient means, then it is his bounden duty to look after the basic

requirements of the petitioner and his children. By considering the present standard of living and also the basic requirements required for the petitioner, this Court is of the opinion that Rs.4,000/- of interim maintenance would suffice for their livelihood. Hence this Court proceeds to pass the following:-

**ORDER**

The application filed by the petitioner U/S. 23 of P.W.D.V. Act is hereby allowed.

Accordingly, the respondent No.1 is hereby directed to pay the interim maintenance of Rs. 4000/- p.m. to the petitioner from the date of this order.

Issue notice to the Respondent on the main petition and also on I.A.No.1 through CDPO, Mundgod and also call for DIR.

R/by 21.11.2024.

-Sd-

Civil Judge and JMFC.,  
Mundgod.