

1 O S No. 46/2022

**IN THE COURT OF THE CIVIL JUDGE & JMFC, AT
SIDDAPUR.**

PRESENT

**SRI. BHARATH CHANDRA K. S. B.A.LL.B,
CIVIL JUDGE & JMFC,
SIDDAPUR.**

Dated this the 16st day of October, 2024

O.S. No.46/2022

**Plaintiff: Annapurna W/o Neelakanta Gouda ಅ ಕು ಮೆ
(By Shri P M H Adv.)**

V/s

**Defendants: Shrikanth Neelakanta Gouda
(By shri R P B Adv.)**

I.A.No.III

**Applicant:Annapurna W/o Neelakanta Gouda ಅ ಕು ಮೆ
V/s**

Opponent: Shrikanth Neelakanta Gouda

ORDER ON I.A. No.III

The plaintiff has filed I.A.No.III U/O. I Rule 10(2) of C.P.C. seeking to implead, Sri. Ganapathi S/o Anand Madival as defendant No. 2 for the reasons set-out in the annexed affidavit.

2. DESCRIPTION OF THE PROPOSED DEFENDANT No.2:

“ Ganapathi S/o Anand Madival. A/a: 50 years, Occ:Agriculture, Ra/t: Hosur, Janata colony, Siddapur post, Siddapur taluk, U.K”

The plaintiff filed this application with the sworn affidavit and he stated as follows;

3. The plaintiff has filed the present suit seeking a permanent injunction against the defendant. He asserts that he owns and possesses land measuring 00-20-00 in Sy. No. 65, Hissa 8, located in Nagarabavi village, Siddapur Taluk (Item no. 1 of the suit schedule property), having acquired the same under a partition effected between the plaintiff and defendant. Accordingly under the partition item no. 2 of the suit schedule property bearing Sy. No. 65/4 was allotted to the defendant. A fence delineates the boundary between his property and that of the defendant. However, the defendant and his agents have been interfering with the plaintiff's peaceful possession. In addition to destroying the fence that protects the eastern and western edges of the northern side of the plaintiff's property, they have attempted to encroach upon it. Furthermore, while the trial is ongoing, the defendant has sold a portion of land in Siddapur Taluk, specifically Sy. No. 65, Hissa 4, measuring 00-20-00, without notifying the plaintiff. The buyer's name has been recorded in the RTC by the revenue authorities, despite the pending case concerning the property. The second defendant has also been causing trouble for the plaintiff by attempting to build a road and further damaging the protective fence on the property in question. It is therefore essential to include the proposed

second defendant as a party to this suit. Hence, sought to allow the application.

4. On the other hand, the defendant inspite of sufficient time granted failed to filed objection to IA No III. Hence the objection to IA No. III was taken as Nil.

5. Heard both side arguments.

6. The following points that arise for my consideration are as hereunder:

1. Whether the plaintiff had made out the sufficient grounds to implead defendant No. 2 in this case?

2. What order?

7. Perused the entire materials available on record. My answers to the above points are as hereunder:

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

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

REASONS

8. **Point No.1:** I am of the opinion that, I need not repeat the entire facts of the application and objection here also, since I have already narrated the same at the inception of this order.

9. The plaintiff has initiated this suit against the defendant seeking a permanent injunction concerning the property listed in the suit schedule. During the pendency of the suit, the plaintiff has filed the present I.A. No. III under Order I, Rule 10 of CPC, based on the reasons outlined in the attached affidavit. Since the reasons for the application have already been detailed at the outset, this court shall proceed to analyze them further.

10. The plaintiff filed this suit based on a specific cause of action against the defendant, as detailed in the plaint. The cause of action that gave rise to the suit concerns a claim for permanent injunction, and such a claim is directed against a person and not a property. According to the plaintiff, the defendant has been interfering with the plaintiff's possession of Item No. 1 of the suit schedule property by removing the fence placed between Item Nos. 1 and 2 of the property. It is alleged that on 8.04.2022, the defendant attempted to destroy the fence. Therefore, the cause of action, as asserted by the plaintiff, arose on 8.04.2022, and it pertains solely to the current defendant.

11. The plaintiff now claims that during the pendency of the trial, the defendant intentionally sold Item No. 2 of the suit schedule property to the proposed defendant. Furthermore, the proposed defendant is allegedly interfering with the plaintiff's possession of Item No. 1 of the suit schedule property. Therefore, the plaintiff argues that the proposed defendant should be added as a party to this suit.

12. However, the plaintiff seems to misunderstand that the cause of action in an injunction suit arises from the actions of a person and not from the property itself. The alleged interference must have occurred as of the date the suit was filed. It is well-established that a cause of action cannot arise after the suit has been instituted. The interference claimed by the plaintiff with respect to the proposed defendant constitutes a separate cause of action, distinct from that of the present defendant. Consequently, the plaintiff cannot implead the proposed defendant based on alleged interference, in a suit originally filed based on a cause of action against the present defendant alone.

13. *At this point, it is appropriate to refer to and reproduce the relevant provision of **Order I, Rule 10(2)** of the Code of Civil Procedure for a clearer discussion on when the court may strike out or add parties. The provision reads as follows:*

"Order I, Rule 10(2) - Court may strike out or add parties:

The Court may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in

order to enable the Court effectively and completely to adjudicate upon and settle all the questions involved in the suit, be added."

This provision clearly states that, a person may be added to the proceedings if their presence is necessary to allow the court to effectively and completely adjudicate upon and resolve all the issues in the suit. However, in the present case, the proposed defendant is neither a necessary nor a proper party to these proceedings. This court is concerned solely with the interference allegedly caused by the current defendant, and the proposed defendant has no connection to the cause of action that arose on 08-04-2022. Therefore, the proposed defendant does not need to be added to this suit.

14. In this regard, this court has relied upon two decisions of the **Hon'ble High of Karnataka Court**, reported in **ILR 1984 KAR 889 – Sri Vardhaman Stanakvisi Jain v. Chandrakumar and another**. The decision in this case, particularly in para 8, is as follows:

"8. It is undisputed that the plaintiff did not seek any relief in the suit against the applicant. From the allegations made in the plaint and the defence presented by the defendants in their written statement, it is clear that the issue involved in this suit is purely between the plaintiff and the

defendants. The plaintiff brought the suit seeking a permanent injunction to prevent the defendants from interfering with its peaceful possession and enjoyment of the suit property, claiming exclusive ownership and possession. If the plaintiff fails to prove its possession of the suit property and the alleged interference by the defendants, the suit may be dismissed at the defendants' request. Should any relief be granted to the plaintiff against the defendants, it will not prejudice the applicant in this injunction suit, as no injunction has been granted against the applicant. The temporary injunction order in this appeal is directed against the defendants, prohibiting them from interfering with the plaintiff's possession of the suit property. The plaintiff has claimed an injunction on the grounds that it is the owner in possession of the suit property. Whether such an injunction can be granted is a matter for trial. If the plaintiff is found not to be the rightful owner in possession, an injunction may or may not be granted to restrain the defendants from interfering with its possession. The judgment in this injunction suit will not bind the applicant, as the judgment in such suits is not in rem. Therefore, I hold that the applicant is not a necessary party.”

15. Additionally, this court refers to **Writ Petition No. 18023/2013 (GM-CPC)** dated 18.06.2013 – **Gowramma and others v. Nagaraj and another**, where in para 4, the Court observed:

“4. Respondent No.1 has filed a suit for a bare injunction against Respondent No.2. The petitioners admit that Respondent No.1 has a right to the suit property, but deny such rights for Respondent No.2/defendant. The petitioners are not necessary parties for the adjudication of the bare injunction suit against Respondent No.2. The trial court has rightly rejected the impleading application filed by the petitioners, and I find no illegality or infirmity in the impugned order.”

16. Furthermore, I also rely on the decision of the Hon'ble Allahabad High Court in Matters Under Article 227 No. 1092/2020 – *Laxmi Charan v. Guddun and others* dated 25.02.2020, where the Court, in para 2, held:

“This is a suit for a bare injunction, and no relief is sought against the respondent. The respondent is neither a proper nor a necessary party to the suit, as the court can effectively and completely decide the matter in the respondent's absence. Therefore, exercising power under Rule 10 of the CPC, the court

cannot implead third parties in such a suit for bare injunction.”

17. In light of these cited judgments from the Hon'ble Apex and High Courts, it is abundantly clear that in a suit for bare injunction, third parties cannot be impleaded as necessary or proper parties unless there is a valid cause of action against them. In the present case, the suit filed by the plaintiff is for a bare injunction against the current defendant, with specific allegations and cause of action, and no relief has been sought against the proposed defendant. Consequently, the plaintiffs have no cause of action or allegations against the proposed defendants, as discussed earlier.

18. Moreover, if the proposed defendant is indeed causing encroachment or disturbance with respect to the suit property, the plaintiffs are free to file a separate suit for appropriate relief against the proposed defendants. However, such an action cannot be entertained within this suit, as allowing the application to implead the proposed defendant would alter the nature and cause of action of the current suit. Therefore, the application to implead the proposed defendant is not sustainable in this context, as previously discussed. Based on the above deliberations and in accordance with the observations in the decisions of the Hon'ble High Courts, the proposed defendant cannot be considered as necessary or proper party in this case. The plaintiff has failed to establish grounds to allow the

application. Hence, this court answer **Point No. 1** in the **NEGATIVE**.

19. Point No.2: For the findings arrived at point No.1, this court proceed to pass the following:

:O R D E R:

The I.A.No.III filed by the applicant/plaintiff U/o.I Rule 10 (2) of C.P.C., is hereby dismissed.

For plaintiff evidence. Call on 05-11-2024.

[Dictated to the stenographer directly on computer, typed by her corrected and then pronounced by me in the open court on this day of 16th October 2024)

**(BHARATH CHANDRA K.S.)
CIVIL JUDGE & JMFC,
SIDDAPUR.**

