

IN THE COURT OF THE SENIOR CIVIL JUDGE AND ACJM,
KARKALA

Present: Smt.Sharmila C.S., B.A.L., LL.M.,
Senior Civil Judge and ACJM, Karkala.

Dated: This the 1st day of October, 2024.

O.S.No.82/2023

Balakrishna Moyli and others .. Plaintiffs
Versus -

K. Shripathi Bhat ..Defendant

PARTIES TO I.A.No.V

Shivananda Prabhu,
Aged 68 years,
S/o. B. Damodhar Prabhu,
R/at.No.20-6-376/30 202 ,
Ganga Residency, Kapikad,
Bejai, Mangalore. ..Applicant

- Vs. -

1. Balakrishna Moyli,
Aged about 66 years,
S/o. Late Koosappa Moyli,
2. Kalpana Balkrishna Devadiga,
Aged about 63 years,
W/o. Balakrishna Devadiga,
3. Pooja Bawangade,
Aged about 36 years,
D/o. Balakrishna Devadiga,
4. Darshana Balakrishna Devadiga
Aged about 32 years
D/o. Balakrishna Devadiga,

All are residing at Ganada Kottige House,
Nakre, Kukkundoor Village,
Karkala Taluk, Udupi District.

.. Opponents/Plaintiffs

i.	Provision under which the application is filed	Order I Rule 3 and Section 151 of CPC
ii.	Relief sought for	To implead applicant as defendant .
iii	The date on which the application is filed	23-07-2024
iv	Number of the application	I.A.No.5
v	The date on which the objections are filed by different opponents	08-08-2024
vi	The date on which the orders were passed on the said application.	01-10-2024

**ORDER ON I.A.NO.V UNDER ORDER I RULE 3 AND
SECTION 151 OF C.P.C.**

Application is filed by one Shivananda Prabhu alleging to be in the possession of the suit schedule house.

2. The applicant has deposed that he has purchased the suit schedule house from the defendant and is in possession and enjoyment of the same. That the suit was filed without his knowledge and any order passed by this court would affect his possession. Consequently prays to allow the application by permitting him to implead as defendant No.2.

3. Per contra counsel for the plaintiffs objects that the present suit for declaration and injunction against the defendant, is governed by Section 34 of Specific Relief Act. That it is the choice of the plaintiff and he is the master of the case, who knows as to who are to be made as parties. Thus for other reasons prays to dismiss the application.

4. Heard from the counsel for applicant and plaintiffs and perused materials on record.

5. The following points arise for my determination.

“Whether the applicant is the proper and necessary party to the suit?”

6. My answers to the above point is in ‘affirmative’, for the following-

REASONS

7. The present suit is for declaration and injunction against the defendant. During the course of the proceedings the defendant has submitted that the house property is now in the possession and enjoyment of one Sri. Shivananda and

prayed to reject the plaint, which IA came to be rejected by this court by passing order on I.A.No.IV dated 30-05-2024. In consequence of the same, the applicant has come up before this court seeking to implead him in the suit.

8. As per the applicant , he is in possession and enjoyment of the suit schedule house. Further he submits that he has purchased the said house along with the landed property from the defendant. As against this contention, it is the allegation of the plaintiffs that the plaintiffs are in possession and enjoyment of the house property situated in the suit schedule property.

9. It was argued by the counsel for the plaintiffs that the plaintiffs have only sold out the landed property and not the house property. Thus question of Shivananda or the defendant being in possession and enjoyment of the same does not arise at all. In support of his arguments, the counsel for the plaintiffs relied upon the Sale Agreement dated 29-11-2013 where the property is alleged to be sold in favour of the defendant, and points out to the recitals of the same, where it is stated that ‘ ಕಟ್ಟೋಣಗಳು ಇರುವುದಿಲ್ಲ ‘ . Thus submits that he

has not sold out any house property either to the defendant or to said Shivananda . Further urges that a person can sell the property which is owned by him and not the property belonged to others. Consequently submits that the application is not maintainable. In this regard the counsel for the plaintiffs relies on following authorities reported in

(1) 2001 (2) Kar.L.J. 262 in “Smt. Kalavathi Rathnakar sate vs. Smt. Ambujamma

(2) AIR 2008 (NOC) 917 in ‘N. Leelavathy V s. Logeswari and another’,

(3) AIR 2008 (NOC) 909 in ‘Smt. Meera Rani and others Vs. Ghanshaym Sharma and others’,

(4) AIR 2010 (NOC) 45 in ‘Muthulingam Vs. V. Gunasekaran and others’

(5) ILR 1984 Page 889 in ‘Sri. Vardhaman Stanakvisi Jain Srvak Sangh Vs. Chandrakumar and another

The sum and substance of the above authorities goes to show that third parties title to the property cannot be determined by the court in a suit for injunction. Further submits that it is the

plaintiffs who may make a particular person as defendant, it is the choice of the plaintiffs, who are masters of their case. It is further held that impleadment of party on a mere apprehension without any act does not arise. Thus prays to dismiss the application.

10. At the first instance the present suit is not a suit for injunction simplicitor, but is for a declaration that the plaintiffs are in possession of plaint schedule house and consequently for a permanent injunction restraining the defendant from interfering with the possession and enjoyment of the suit property. The suit property is a residential house by name Ganadakottige, bearing Dor No.6-191 situated within Kukkundoor Village, Karkala Taluk, in which the present applicant is alleging to have resided. The authorities relied upon by the counsel for the plaintiffs would have been aptly applicable, if the suit was for bare injunction. Hence the abovesaid authorities are not applicable to the instant case. But the plaintiff is claiming possession over the property. However, the Sale agreement and Sale Deed produced by the plaintiffs are not in dispute. The plaintiffs are also not disputing

the fact that they have sold the land as per the said sale deed/sale agreement. The only contention of the plaintiffs is that the house property has not been sold to the defendant. This fact needs a detailed discussion, which also requires a detailed evidence on record. When the applicant is submitting that he is in possession of the property, having purchased the same from the defendant, the applicant needs to be provided with an opportunity to contest the above suit and submit his defence. When the suit itself is for declaration that the plaintiffs are in possession of the suit schedule house, this court also has to see the deemed possession or physical possession of the applicant, who has produced several documents on record to show that he is in possession of the suit property. Therefore, the very possession of the plaintiffs over the property has to be decided in the presence of the applicant, who is in possession of the documents depicting his possession over the suit schedule house.

11. It was argued by the counsel for the plaintiffs that this court has rejected the application seeking amendment of the plaint. That application is noway related to the present

application filed by the applicant - Shivananda . Therefore all these arguments urged by the counsel for the plaintiffs does not hold any water at this stage. Accordingly holding that the applicant who alleges himself to be in possession of suit property, is a proper and also a necessary party, the above point is answered in the affirmative.

12. In view of the above reasoning, I proceed to pass the following :

ORDER

I.A.No.V filed by the applicant under Order I Rule 3 and Section 151 of CPC is here with allowed.

The applicant is impleaded as defendant No.2.

Counsel for the plaintiffs is directed to carry out amendment in the plaint by impleading the applicant as defendants No.2.

(Dictated to the Stenographer, transcribed by her, corrected and then pronounced by me in Open Court on this the 1st day of October, 2024.)

(SHARMILA C.S.)

Senior Civil Judge & ACJM, Karkala.