

**ORDER ON IA No.7**

The plaintiff has filed the present application under Order I Rule 10 read with Section 151 of C.P.C., praying to implead the opponents as supplemental defendant No.4 to 6.

2. It is averred in the affidavit annexed to the application that, the defendant no.3 in his written statement contend that the alleged road was constructed and maintained by Mudradi Grama Panchayath and Zilla Panchayath from out of its own funds and the area development fund of the parliament member and the local MLA. To adjudicate the matter fully and finally and to decide the rights of the respective parties, the supplemental defendants have to be impleaded in the above suit. With these, the plaintiff prayed to allow the application.

3. In pursuance to the notice issued by this court, the opponent no.4 and 5 appeared through its counsel and opponent no.6 remained absent. The opponent no.4 and 5 resisted the application by filing objection. It is specifically contented that the application is not maintainable under law or on facts. The

Mudradi Grama Panchayath has certified that the Bhakre Mutt Sri. Bhadrakali Devastan Road in Mudradi Village is Grama Panchyath Road. They have developed the said road by block toping for the benefit of the general public of that locality and bhajakas of the devasthanam at the request of the Mudradi Gram Panchayath. They are not at all necessary for the just disposal of the above case. Therefore, the opponent No.4 and 5 sought for dismissal of the same.

4. The points that would arise for consideration are:-

1. Whether the application filed by the plaintiff is deserves to be allowed?
2. What order?

5. I have heard the learned counsel for the parties to the lis and meticulously perused the material on record.

6. My answer to the above said points are as follows:

Point No.1: In the Negative;

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

### REASONS

7. **Point No.1:** After hearing and careful perusal of the application, objection and material placed on record, when the matter was posted for plaintiff evidence, at this stage the plaintiff has filed present application to implead IA opponents as supplemental defendant No.4 to 6. The plaintiff has filed the present suit against the defendant No.1 to 3 for grant of Permanent Injunction restraining them, their men, servants and all other persons claiming under them from trespassing into or by forming any road or committing any illegal act by any mode in the plaint 'A' schedule property. The learned counsel for the plaintiff argued that, the defendant no.3 in his written statement at para no.9 specifically contended that the alleged road was constructed and maintained by Mudradi Grama Panchayath and Zilla Panchayath. In order to prove alleged construction the proposed supplemental defendants are necessary parties to the suit. Counter to that the learned counsel for the opponent No.4 and 5 submitted that the opponents are neither necessary parties nor proper parties to the suit. The application is filed only to harass these opponents.

8. The case of the plaintiffs that the suit 'A' schedule properties absolutely belongs to the plaintiff and his family members. There exists a small passage leading to said house from Mudradi-Uppala tar road. The said passage is absolutely belongs to the plaintiff and his family members leading only to the plaintiff and his family member's house situated in Sy. No.68/3. The defendant no.3 is residing near by the plaint 'A' schedule property and the defendant No.1 and 2 are residing far away from the plaint 'A' schedule property. The defendants have no connection whatsoever with the plaint 'A' schedule property. The defendants in collusion trespassed in to the plaint 'A' schedule property and illegally and highhandedly extended the above said passage. On the other hand third defendant had taken specific defence that there has been in existence an ancient motorable road commencing from Mudradi Shivapura Public Road to Bakremutt. The said road is very ancient, motorable and he and other villagers of that locality have been using the said road since ancient times on customary right. The said road passes over the plaint 'A' schedule property and also over the properties of others. The above said road has been maintained by Mudradi

Grama Panchayath subsequently the said road was handed over to Udupi Zilla Panchayath.

9. It is worth to refer decision of the Hon'ble Apex Court in the case of Kasturi -Vs- Iyyamperumal and Others reported in (2005) 6 SCC 733, wherein their lordships held that two test are to be satisfied for determining the question who is a necessary party. **Test are (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party.** In the case on hand the plaintiff specifically pleaded that passage/road existing in the plaint 'A' schedule property exclusively belongs to him and his family members. On the other hand the the third defendant had contended that the road passing through plaint 'A' schedule is a public road and same has been maintained by the Panchyath. In view of above rival contentions, this court had framed two distinctive issues casting burden upon the plaintiff and the defendant no.3 to prove the nature of the alleged road/passage. Thereby, proving the specific contentions cast upon the parties to the lis and applying the test laid down in the case of Kasturi (supra), the opponents are not necessary parties to the present

case and court can pass an effective decree in the absence of the opponents. Accordingly, I answer point No.1 in the **Negative**.

10. **Point No.2:** In view of discussion and the findings arrived at point No.1, I proceed to pass the following:

### **ORDER**

IA No. 7 filed by the plaintiff under Order 1 Rule 10 read with Section 151 of CPC dismissed.

No order as to costs.

Call on:

II Addl. Civil Judge & JMFC.,  
Karkala.