

ORDERS ON NO. VII

This is an application filed by the applicant under order I rule 10(2) of CPC to implead him as defendant No.6 in the above suit. In support of the I.A. he has filed his affidavit stating that he is the necessary party in the present suit. He has stated that towards the

northern side of his property bearing Sy.No.169/10B4 there exists a old public road called Kodi Beech road and in between his property and the said road there exists a road margin land which forms frontage to his property. It is stated that the plaintiff has illegally put up a bunk shop over the said road margin land in front of the commercial complex and the house situated in the land of the applicant. It is stated that the said bunk shop is causing obstruction for free movement of vehicles and the general public for using the said road. The same is informed by the brother of applicant to the concerned authorities to take necessary steps for removal of said bunk shop. After the death of his brother the applicant started requesting concerned authorities to take legal action against the plaintiff. In spite of the same no action is taken by the concerned authorities. In this regard the applicant has also informed the Lokayuktha regarding the dereliction of the duty by the said officials. Later when the defendants started initiating legal action against the plaintiff the present suit is filed against defendants suppressing the true facts. It is stated that with the applicant is not made a party to the present suit any order passed by this court will definitely effect the right of the applicant. The applicant is the necessary party in the present suit. As such it is prayed to allow the application.

2. The plaintiff has filed objection stating that the application is not maintainable. The applicant is not having any legal interest nor direct interest in the suit property. The plaintiff has not claimed any relief against the applicant. There is no grounds for allowing the application. The allegations made in the affidavit are false. Accordingly prayed to reject the application.

3. Heard and perused the records.

4. The points that arise for my consideration are as follows:

- 1) Whether the applicant is necessary party to this suit ?
- 2) What order?

5. My findings on the above points are as follows:

Point No.1: In the Affirmative

Point No.2: as per final order,
for the following

REASONS

6. The plaintiff has filed present suit for the relief of bear injunction against the defendants who are the public authorities. The applicant who has filed this application is an individual who is claiming that if any order or judgement is passed in the present suit against defendants the same will be effect that right of applicant. It is the contention of the applicant that the defendant No. 1 to 5 may not have interest in contesting the present suit. As could be seen from the plaint it goes to show that plaintiff has filed the suit to restrain the defendant No.1 to 5 from evicting him from the 'B' schedule land

without following due process of law. From the plaint it goes to show that the bunk shop is described in the 'B' schedule of the plaint. The very contention of the applicant is that the said bunk shop is situated in the land which forms frontage to the property of the applicant. As could be seen from records placed before me it goes to show that there is some dispute in respect of the said bunk shop between the plaintiff and the applicant. From the written statement of defendant No.5 and the document produced on behalf of defendant No.1 to 4 it goes to show that the applicant has moved the defendants for taking legal action for removal of the said bunk shop. Whether the said bunk shop is put up by the plaintiff legally or illegally or whether the same is situated in the land which is forming frontage to the land of applicant cannot be decided at this stage.

7. If the suit filed by the plaintiff goes without being contested by the defendant no.1 to 5 who are the public authorities and if this court passes any judgment against those defendants then same may cause hardship to the applicant who is claiming that the said land is forming direct frontage to his land. Moreover the records placed before me goes to show that there is serious dispute with regard to the existence of the said bunk shop and the applicant and his brother has also approached the concerned authority to take action for removal of the said bunk shop. The presence of the application is necessary to

enable this court to effectually and completely adjudicate and settle the dispute between the parties. Moreover if this application is allowed no harm will be caused to any of the parties to the suit, rather the same will avoid multiplicity of proceedings. By allowing the application this court can decide the suit on merits effectively after giving opportunity to all the parties. The counsel for the application has relief upon 2010 (3) KLJ page 543. I have gone through the said authority in detail and the same is aptly applicable to the facts and circumstances of this case. In view of the discussion made above point No.1 is answered in the AFFIRMATIVE.

8. POINT No. (II) : - For the aforesaid reason and discussion, I proceed to pass the following: -

ORDER

I.A.No.VI filed by the applicant under Order 1 Rule 10(2) read with section 151 of CPC is allowed. No costs.

The plaintiff is directed to make necessary amendment to the cause title of the plaint by impleading the applicant as defendant No.6 to the suit and to furnish amended plaint by 16-12-2016.

(PREETH.J)
Prl. Civil Judge & JMFC.,
Kundapura