

## **ORDER ON I.A. No.XI**

The I.A. No.XI is filed by the plaintiff under Order 1 Rule 10 of CPC praying this Court to implead the person mentioned in the application as defendant in this suit.

2. The above application of the plaintiff is supported with the affidavit of the plaintiff, wherein it is contended that the proposed impleading party is the subsequent purchaser of the suit “B” schedule property. But he is not a party to this suit. He recently came to know about the transaction. He is the necessary and proper party to this suit. Hence this application.

3. On the other hand, the learned Advocate for the defendant has filed objection to the said I.A. No. XI by submitting that the application is not at all maintainable as the application is misconceived, frivolous and vexatious. He denied the contents of the present application. The suit is for the relief of bare injunction and this defendant is in the actual possession and enjoyment of the suit “B” schedule property. There is no cause of action against the impleading party. Therefore he is not the proper and necessary party to this suit. Hence, prayed to dismiss the application.

4. I have heard the arguments of learned Advocates on both the sides.

5. The points arise for my considerations are:

1. Whether the applicant has made out good grounds to implead person mentioned in the application as defendant No. 2 in this suit?

2. What Order?

6. My answers to the above 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:** This present application is filed by the plaintiff under Order 1 Rule 10(2) of CPC praying this Court to implead the person in this suit.

8. The learned advocate for the plaintiff has argued that the suit is one for the relief of permanent injunction with regard to the suit “A” and “B” schedule properties. The impleading party is the subsequent purchaser of the suit “B” schedule property. Therefore, he is the necessary and proper party to this suit.

9. Admittedly, the suit is for the relief of permanent injunction and in a suit for permanent injunction, the parties must prove their actual possession and enjoyment over the suit properties as on the date of the suit. The party who filed this application must prove that the person to whom he wants to be implead into the suit is a necessary and proper party.

10. But in the present case, the plaintiff nowhere in his affidavit stated the reason for implead the person mentioned in the application to this suit. In the entire application, the applicant has not stated anything about whether the impleading party purchased the suit “B” schedule property

prior to filing of this suit or subsequent to the institution of this suit. Further the applicant has not produced a single paper to prove that the impleading party has purchased the suit “B” schedule property. In absence of such proof, this court cannot believe the contents of the application and affidavit annexed to the application. Without showing the sufficient reason to allow the application, this court cannot allow the present application. Moreover, the plaintiff has not disclosed that the impleading party is neither necessary party nor proper party to this suit. Hence on these grounds, I am answered the point No. 1 in **negative**.

**11. Point No.2:** In view of findings to the above points, I proceed to pass the following;

**ORDER**

The I.A. No. XI is hereby dismissed.

No order as to cost.

**II Addl.C.J. & J.M.F.C.,  
Kundapura**