

**IN THE COURT OF II ADDITIONAL CIVIL JUDGE AND
JUDICIAL MAGISTRATE FIRST CLASS AT KUNDAPURA,
UDUPI DISTRICT.**

Dated this the 4th day of March, 2022

PRESENT:

**Smt. Vidya, A.S. B.A., LL.B.
II Addl. Civil Judge & J.M.F.C.,
Kundapura. Udupi District.**

Original Suit No. 171/2016

Plaintiff:	Shankaranarayana Karnik (45 years) S/o.Late Nagappayya Karnk, R/o.Karnikara Bettu, Kavrudi Village and Post, Kundapura Taluk and Udupi District.
	--And--
Defendant:	Subraya Karnik (68 years) S/o.Rangappayya Karnik, R/o.Karnikara Bettu, Kavrudi Village and Post, Kundapura Taluk and Udupi District.
	<u>RANK OF THE PARTIES ON I.A.</u> <u>No.XIV</u>
Applicant/Defendant	Shankaranarayana Karnik
	(Rep By Sri.H.A.S-Advocate)
	--Vs--
Opponent/Plaintiff	Subraya Kanik
	(Rep By Sri.M.S.S-Advocate)

ORDERS ON I.A.NO. XIV

The instant application filed by the plaintiff under Order I Rule 10 and section 151 of CPC to implead the proposed defendants in the suit.

2. In the accompanying affidavit applicant has stated that, the proposed impleading party one Y. Prabhakara Shetty is the subsequent purchaser of the 'B' Schedule Property in the above suit. The proposed party purchased the suit 'B' schedule property which is disputed pending before this Hon'ble Court. During the pendency of the case the above name impleading party purchased the said property. But, recently came to my knowledge, the proposed party is the subsequent purchaser of the said property. He is the necessary party in the above case. **With these averments the applicant has sought for allowing the application.**

3. Per contra, opponent has filed objection to the said application, stating that the application filed by the applicant is most misconceived, frivolous and vexatious and the same is unsustainable under law or on merits. That the suit is one for injunction simpliciter in respect of plaint 'A' and 'B' Schedule properties. That the defendant has been contesting the suit in respect of plaint 'B' schedule property only and he has no

contest in respect of plaint 'A' schedule property. That the plaintiff has absolutely no manner of right, title or interest or possession whatever over the plaint 'B' Schedule property. There is no cause of action against Y. Prabhakar Shetty. That the said Y. Prabhakar Shetty is the absolute owner and has been in actual possession and enjoyment of the Pliant 'B' schedule property on Purchase Right, he having purchased the same from one Santhosh vide registered sale deed dated 19.12.2018 bearing doc. No. 2096/2018-19 of Shankaranarayana SRO. That the said Santhosh had purchased the 'B' Schedule property from the defendant vide registered sale deed dated 13.04.2016 bearing doc. No. 74/2016-17 Shankaranarayana SRO. There is no bar to the said Y. Prabhakar Shetty to purchase plaint 'B' Schedule property. That Y. Prabhakar Shetty is not a proper or necessary party to the suit. That the application is barred under law. That Y. Prabhakar Shetty has stepped into the shoes of the original defendant. **With these contentions the opponent has sought for rejecting the application.**

4. Heard the arguments of the learned counsel appearing for the parties and perused the materials on record.

5. Now, the following points arise for consideration of this Court are:

Point No.1: Whether the proposed defendant is either a necessary or proper party to the suit ?

Point No.2: What order?

6. The findings of this Court on the above said points are as under:

Point No.1: In the Affirmative.

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

REASONS

7. **Point No.1** : I have already narrated the facts stated in the affidavit annexed to the application and the objections filed by the opponent. The learned counsel for plaintiff has submitted that, the suit is for the relief of permanent injunction with regard to 'A' and 'B' schedule property. The proposed impleading party one Y. Prabhakara Shetty is the subsequent purchaser of the 'B' Schedule Property. Therefore he is necessary party to this suit.

8. As per Order 1 Rule 10(2) 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 effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

9. The learned counsel for opponent has submitted that, Y. Prabhakar Shetty is the absolute owner and has been in actual possession and enjoyment of the Pliant 'B' schedule property on Purchase Right, he having purchased the same from one Santhosh vide registered sale deed dated 19.12.2018. That the said Santhosh had purchased the 'B' Schedule property from the defendant vide registered sale deed dated 13.04.2016. That Y. Prabhakar Shetty is not a proper or necessary party to the suit. IANo.XI filed by the plaintiff for impleading the said Santhosh has been dismissed by this court. The reason stated in the order dt:19-02-2019 is that, no specific reasons are mentioned in the application and no documents are produced. The defendant subsequently, transferred that property infavour of the another person. In order to determine the case of the plaintiff in presence of the person, who is in hold of

properties, is necessary. As per contentions of the plaintiff itself the properties of the plaintiff is overlapping on property of defendant. In suit for injunction Plaintiff has prove that, in his location, boundary as well as existence of the schedule property. So, in order to identify that property the presence of the defendant is also necessary. Though, he is not necessary party to the suit, he is also the proper party. He may be added as the party for the effective adjudication of the case. Even though, no relief is claimed against the subsequent purchaser. Since, the proposed defendant himself says that, he is subsequent purchaser.

10. Merely, because the earlier application is rejected by my predecessor it does not mean that, this application is to be rejected by the Court. The earlier application has been rejected not by me, my predecessor because, no specific reasons are assigned by the party and no documents are produced by the party, in order to substantiate his claim. However, in this application the plaintiff is specifically contending that, the defendant has sold that property to third party. Y. Prabhakara Shetty is the subsequent purchaser of the 'B' Schedule Property in the above suit. The plaintiff has specifically stated that the property of the plaintiff is

overlapping on the property of defendant. Now the subsequent purchaser step into shoes of the defendant, when the subsequent purchaser step into the shoes of defendant it is inferred that he is in the possession of the defendants property. Therefore opinion of this Court that, the proposed defendants is necessary party to the suit to adjudicate the case conclusively and determine all the issues on the schedule land and also to avoid multiplicity of proceedings. **With these observations, this court has answer Point No.1 in the Affirmative.**

11. Point No.2: For the aforesaid discussion on point No.1, this Court proceeds to pass the following:

ORDER

I.A. No. XIV filed by the applicant under Order I Rule 10 and R/w. section 151 of CPC is hereby allowed.

For Amendment and Amended plaint.

Call on: 17-03-2022

(Dictated to the stenographer, directly on computer, corrected by me and then pronounced in the open Court on this **4th day of March, 2022**)

(Smt.Vidya A.S)
II Addl. Civil Judge & J.M.F.C.,
Kundapura, Udupi District

RMS