

Orders on IA No. 16

The plaintiffs have filed this application under Order 1 Rule 10(2) of CPC to implead the proposed defendants as defendants No. 5 to 8 in this suit.

2. It is stated in the accompanying affidavit that the plaintiff is the permanent resident of Kamalashile Village and he is doing agricultural in the Survey No. 116 of Kamalashile Village. The defendants are his brothers and they are having separate house and agricultural land on the eastern side of the suit schedule properties. The plaintiff is in possession of the suit property and raised 3,000 arecanut trees, 20 coconut trees and 2,000 Banana fruit bearing trees over the Sy. No. 116 measuring 5 acre of Kamalashile Village. He has filed an application for grant of land under the schedule tribes and other Traditional forest Dwellers (Recognition of forest rights) Act 2006. On 15-05-2015 the Tahasildar of Kundapura hold enquiry and conducted survey and identified the property as per the sketch. He is paying tax to the suit property. The proposed defendants being public servants have surveyed the land owned by the plaintiff for the purpose of grant. The proposed defendants are necessary parties to the suit in order to prove the issues involved in the suit. If the application is allowed no hardship would be caused to the other side. On the other hand if the application is not allowed the plaintiff will be subjected to hardship and injustice. Hence prays to allow the application.

3. The defendant No. 4 filed an objection to the above application and contended that the application is not maintainable either on law or on facts. The proposed defendants are public servants as such with out serving the notice under Section 80 of CPC

they cannot be impleaded as defendants. They are not necessary parties and there is no cause of action against them. The land was granted to the plaintiff. The proposed defendants are the officers of the land grant authorities, without serving notice they cannot be impleaded in this suit. Hence prays to dismiss the application.

4. Heard the counsel for both sides and perused the materials on record.

5. The points that would arise for my consideration are as under:

//POINTS//

1) Whether the proposed persons are either necessary or proper parties to the suit ?

6. My answer to the above point is in the **Negative** for the following:

// REASONS //

7. The plaintiff has filed this suit against the defendants for the relief of permanent injunction in respect of suit properties. After service of summons the defendants have appeared before the Court and contested the case by filing written statement. Issues were framed. The suit is pending for plaintiff Evidence. The plaintiff has filed this application to implead the RFO, Tahasildar, The officer of schedule tribes development authority and Deputy commissioner of Udupi, on the grounds that the plaintiff filed the application for the grant of land under the scheduled tribes and other Traditional forest

Dwellers (Recognition of forest rights) Act 2006. The Tahasildar after holding enquiry got surveyed the suit property in pursuant to the application filed by the plaintiff. The suit is filed for bare injunction, in a bare injunction suit the entire burden is on the plaintiff to establish his possession and enjoyment over the property in dispute as on the date of suit and the interference by the defendants. The proposed defendants are public servants. There is no relief or cause of action against them. As per Section 80 of CPC without serving notice as required under Section 80(1) of CPC the proposed defendants cannot be impleaded in this suit. More over in order to determine the issues involved in this suit the proposed defendants neither necessary nor proper parties to the suit. Therefore this Court is of the opinion that the application deserves to be rejected. Accordingly, I proceed to pass the following:

ORDER

The I.A No. 16 filed by the applicants under Order 1 Rule 10(2) is hereby dismissed.

For Plaintiff Evidence.

Call on 30-06-2025.

II Addl. Civil Judge and J.M.F.C.,
Kundapura

