

KABI200007262013



IN THE COURT OF THE CIVIL JUDGE & JMFC.,
AT: HAGARIBOMMANAHALLI

DATED THIS THE 2nd DAY OF SEPTEMBER - 2024

PRESENT

Sri. SAYED MOHIUDDIN URF KHAWAJA PEERAN, B.A., LL.B. (Spl.),

CIVIL JUDGE & JMFC., HAGARIBOMMANAHALLI

O.S.No.143/2013

PLAINTIFF/s : **Bavi Vijayananda S/o Lingappa**,
Aged about: 55 years, Occ: Agriculturist,
R/o:Moregeri Village, H.B.Halli Taluk,
Bellary District.

Vs.

DEFENDANT/s : 1) **Anandadevanahalli Kotragouda**
S/o Basavanagouda,
Aged : 54 years,

2) **Anandadevanahalli Gurubasavanagouda**
S/o Basavanagouda,
Aged : 52 years, Guru Tailors,
Hampasagara Road, Huvinahadagali.

3) **Anandadevanahalli Virupakshagouda**
S/o Basavanagouda,
Aged : 49 years,

4) **Anandadevanahalli Shekhargouda**
S/o Basavanagouda,
Aged : 45 years,

5) **Anandadevanahalli Doddabasavanagouda**
S/o Basavanagouda,
Aged : 41 years,

6) **Anandadevanahalli Shanmukhanagouda
S/o Basavanagouda,**
Aged : 37 years,

7) **Anandadevanahalli Bullanagouda
S/o Basavanagouda,**
Aged : 27 years,

Defendant No.1, 3 to 7 are R/o Moregeri
Village, H.B.Halli Taluk, Bellary District.

8) **Goudara Basamma W/o Kotragouda,**
Aged : 30 years, R/o Hagarigajapura,
Harapanahalli Taluk, Davanagere District.

I.A.No.XI

APPLICANT/PLAINTIFF/s: **Bavi Vijayananda S/o Lingappa,**

(Rep. by Sri. **B.P.**, Advocate.)

Vs.

RESPONDENTS/DEFENDANTS/s:**Anandadevanahalli Kotragouda
S/o Basavanagouda and others,**

(D-1, 3, 7 Rep.by Sri..**A.K.**,-Advocate,
D-2 to 8 Rep.by Sri..**S.S.P.**,-Advocate)

**:ORDER ON I.A.No.XI FILED BY THE PLAINTIFF UNDER
ORDER I RULE 10 R/w SEC.151 of CPC:**

The plaintiff has filed the above said I.A.No.XI under
Order I Rule 10 R/w Sec.151 of CPC to implead the proposed
defendants in the present suit as defendant No.9 and 10.

2. In the accompanying affidavit to the IA.No.XI it is stated by the plaintiff that, the plaintiff has filed the present suit against the defendants for the relief of declaration of title and permanent injunction. Further he has stated that the suit schedule property comes under the Gramanath property, hence the proposed defendants are necessary parties to the suit. Due to oversight he has not informed his Counsel to implead the proposed defendants in the present suit. If the application is allowed no injustice will be caused to the other side. If the application is not allowed he will be put to hardship. Hence, he prays to allow the IA.

3. After filing of the application, notices were issued to the proposed defendants, they served with the same. In response to the same they have not appeared before the Court to contest the said application. To the said application, the defendants have filed their objections by denying the contention of the plaintiff, and further contended that the reasons assigned in the application are false. The proposed defendants were not concerned to the suit schedule property. There is no prayer against the proposed defendants. Trial has

been commenced long back. The evidence of the plaintiff also concluded. The plaintiff with an intention to drag on the proceedings filed the false application. The proposed defendants are not the necessary and proper parties to the present case. Hence, they prays to dismiss the IA.

4. Heard the arguments and perused the records.

5. The following points arise for my consideration:

1. Whether the plaintiff has made out proper grounds to allow the I.A.No.XI?

2. What order?

6. My answers to the above points are as follows:

Point No.1 : In the **AFFIRMATIVE**

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

REASONS

7. **Point No.1** :- The present suit is filed by the plaintiff against the defendants for the relief of declaration of title and permanent injunction with respect of suit schedule property. When the case was posted for plaintiff evidence on additional Issues the present application was filed by the plaintiff to implead the proposed defendants. The contention of the

plaintiff is that the proposed defendants have issued endorsements that the suit property comes under the Gramanath property, as such the proposed defendants are the necessary parties to the present suit.

8. I have perused the plaint averments. The plaintiff in the plaint para No.3 has stated that “ the said property is standing as Gramanath in the ROR documents”. The defendants in their written statement Para No.11(f), they have contended that, “ The concerned revenue department is the proper and necessary party to the suit”. On the basis of the pleadings this Court has framed additional Issue No.2 dated 18.07.2022 that “ Whether the suit is bad for non-joinder of necessary parties?”. As stated above as per the contention of the plaintiff in the ROR the suit schedule property is standing as Gramanath property. As stated above the defendants have contended that the concerned revenue department is proper and necessary party to the suit. Further in this regard the additional Issue No.2 was also framed by this Court. As per the contention of both the parties it appears that for avoiding inconvenience and to

avoid multiplicity of proceedings the presence of the proposed defendants are necessary. On going through the entire materials available on record, it discloses that for complete and final decision on the question involved in the suit the presence of the proposed defendants is necessary. As stated above the proposed defendants after service of summons they have not appeared before the Court to contest the application, but the defendants have filed the objections to the said application. In the reported decision **(1992) 2 SCC 524 Ramesh Hiranand Kundanmal vs Municipal Corporation Of Greater Bombay and others** the Hon'ble Supreme Court of India in **Para No.5 and 6** of the said decision held as under;

5. It was argued that the Court cannot direct addition of parties against the wishes of the plaintiff who cannot be compelled to proceed against a person against whom he does not claim any relief. Plaintiff is no doubt dominus litis and is not bound to sue every possible adverse claimant in the same suit. He may choose to implead only those persons as defendants against whom he wishes to proceed though under Order I Rule 3, to avoid multiplicity of suit and needless expenses, all persons against whom the right to relief is alleged to exist may be joined as defendants. However, the Court may at any stage of the suit direct addition of parties. A party can

be joined as defendant even though the plaintiff does not think that he has any cause of action against him. Rule 10 specifically provides that it is open to the Court to add at any stage of the suit a necessary party or a person whose presence before the Court may be necessary in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit.

6. Sub-rule(2) of Rule 10 gives a wide discretion to the Court to meet every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on record. The question of impleadment of a party has to be decided on the touch stone of Order I Rule 10 which provides that only a necessary or a proper party may be added. A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case.

On going through the entire materials available on record and on going through the contention of both the parties, I am of the opinion that for passing the effective decree the proposed defendants are the necessary parties to the present suit. Hence, I answer **Point No.1** in the **AFFIRMATIVE.**

9. Point No.2 :- For the aforesaid reasons and discussions made above I proceed to pass the following: -

ORDER

I.A.No.XI filed by the plaintiff under Order I Rule 10 R/w Sec.151 of CPC., is hereby allowed.

The proposed defendants are impleaded in the present suit as defendant No.9 and 10.

The plaintiff is directed to make necessary amendment in the cause title of the plaint.

(Dictated to the Stenographer, transcribed and computerized by her, corrected by me, and then pronounced in the open court on this the 2nd day of September 2024.)

**(SAYED MOHIUDDIN URF KHAWAJA PEERAN)
CIVIL JUDGE & JMFC., HAGARIBOMMANAHALLI**