

IN THE COURT OF SENIOR CIVIL JUDGE & JMFC.,
AT SHORAPUR

PRESENT:- Smt. Tayyaba Sultana, B.A., LL.B.,
Senior Civil Judge & JMFC.,
Shorapur.

Dated this the 17th day of August 2019

ORIGINAL SUIT No. 27/2019

PLAINTIFF/S:

Vishnuvardhan S/o.
Govardhan Rafugar,
Age: 45 years, Occ: Agriculture
R/o. Shorapur, Tq: Shorapur
Dist . Yadgir

(By Sri. NRK., Advocate)

V/s.

DEFENDANTS/S:

Mabusab S/o.
Gulam Mohammed,
Aged about: 35 years,
Occ: Agriculture,
R/o. Venkatapur,
Tq: Shorapur, Dist. Yadgir

(By Sri. MH Advocate)

3RD PARTY PETITIONER:

Syed Sami Ahamed S/o.
Syed Omar, Age: Major,
Occ: Govt. Servant,
R/o. Dakhani Mohalla
Shorapur

(By Sri. BSP Advocate)

ORDERS ON IA.No.8

The I.A.No.8 is filed by the 3rd party petitioner by name Syed Sami Ahamed S/o. Shed Omar U/o.1 Rule 10 of CPC with a prayer to add this petitioner as defendant No.2.

2. In the affidavit annexed with the application, the petitioner has contended that, he filed suit in OS No.125/2013 in the court of Hon'ble Civil Judge at Shorapur against the defendant of the present suit for specific performance of contract in respect of suit land Sy No.26/1 situated at Shorapur and the same is posted for evidence on 19.08.2019. The plaintiff of this suit having the knowledge of the said suit filed by the petitioner has filed a suit for specific performance of contract against the defendant of suit OS No.27/2019 in this court against the same defendant in respect of same suit land and now the same is pending at the

stage of hearing on IA No.I. This suit is a collusive one and has been filed to defeat the claim of this petitioner, hence it is necessary for this petitioner to be made as a party to put his claim. Hence prayed to allow the application.

3. On the other hand, the plaintiff has filed detailed objection and prayed for dismissal of the application.

4. Heard the learned counsels on both side.

5. The following points arises for my consideration:-

POINTS

1. **Whether the IA. No.8 filed by 3rd party petitioner U/o.1 Rule 10 of CPC is deserves to be allowed?**

2. **What order?**

6. My findings 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:- Admittedly this suit is filed by the plaintiff against the defendant for the relief of specific performance of contract in respect of suit property. Now the 3rd party petitioner has filed this application to implead him as a defendant No.2 in this case alleging that, he filed a suit for specific performance of contract before the Civil Judge (Jr. Dvn) Shorapur with respect to the same property.

8. Based on the rival contentions of both the parties and on perusal of material available on record, the scope of this suit is very limited in nature, if in any case the proposed defendant is allowed to impleaded the scope of the suit will be enlarged from a suit for specific performance to a suit for title and possession, which is not the law. Moreover the character of the suit will be

entirely transformed and serious questions will be involved and it will lead to a complicated litigation. As such, the presence of the 3rd party is not at all necessary for determining the real question in controversy between the parties and only if the 3rd party is bound by the final result of the suit, then his or her presence is necessary as the contract is existing only between the plaintiff and defendant and the 3rd party has no role to play in a suit for specific performance of contract. As such, in view of discussion made the application filed by the 3rd party petitioner is not maintainable. Hence, in view of the above reasons, I proceed to answer Point No.1 in '**Negative**'.

9. Point No.2:- In view of the above discussion, I proceed to pass the following:

ORDERS

I.A No.8 filed by the 3rd party petitioner U/o.1 Rule 10 of CPC is dismissed.

No order as to costs.

(Dictated to the Stenographer directly on computer typed by him, script corrected and then pronounced by me in the open court this the day of 17th day of August 2019).

(SMT. TAYYABA SULTANA,)
Senior Civil Judge & JMFC.,
Shorapur.