



Presented on : 18-11-2023
Registered on : 20-11-2023
Decided on : --
Duration :
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RA No.5009/2025

IN THE COURT OF II nd ADDL.DISTRICT AND SESSIONS COURT

YADGIR,

SITTING AT SHORAPUR.

RA No.5009/2025

DATED THIS THE 22ND DAY OF JULY, 2025.

Shivanagouda S/o Gurusangappa, Died by Lrs.

1. Neelamma W/o Late Shivangouda & Others.

Defendant No.1a to 1f /
Appellants.

V/s

1. Sharanappa S/o Goshappa Bande,

Plaintiff/Respondent No.1.

2. Sangangouda S/o Ningareddeppagouda Dhanareddy,

3. Bhimangouda S/o Parmappagouda Police Patil,

Defendant No.2 & 3/
Respondent No.2 & 3.

IA U/O 1 RULE 10(2) OF CPC

1. Sri.Somappa Gouda S/o Veerupakshappa

Petitioner/IIIrd party

(By Sri.Md.Anwar Ahmed Adv.,)

V/s

Shivanagouda S/o Gurusangappa, Died by Lrs.

1. Neelamma W/o Late Shivangouda & Others

Respondent No.1(a) to (f)/



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Appellants No.1(a) to (f)

(By Sri.T.G.K Adv.,)

2. Sharanappa S/o Goshappa Bande & Others

Respondent No.2 to 4/

Respondent No.1 to 3.

(R1 to 4 By Sri.K.T Adv.,)

ORDER ON IA FILED UNDER ORDER I RULE 10(2) R/W
SEC.151 OF CPC.

The proposed respondent No.4 has filed this IA for impleading him as respondent No.4, in support of IA the proposed respondent No.4 has filed his affidavit stating that, he had purchased the suit schedule property, shown in OS No.133/2021, the said property purchased for consideration amount of Rs.27,50,000/-, under registered sale deed dated 30.04.2024, from the plaintiff by name Sharanappa S/o Ghoshappa, who his respondent No.1 in this appeal, his vendor has become absolute owner and in possession of suit schedule property by virtue of judgment and decree passed in OS No.133/2021, dated 04.11.2023, after laps of 150 days



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from the date of judgment and decree in the said suit, and when there was no stay order, he has purchased the suit schedule property as the judgment and decree passed in OS No.133/2021, dated 04.11.2023 attained finality. Further he stated in his affidavit that, there was no bar to his vendor to sell the suit property, since from the date of purchase the proposed respondent No.4 is in peaceful possession and enjoyment of the suit schedule property as a absolute owner, further he has stated in his affidavit that, his vendor Sharanappa S/o Ghoshappa expired on 15.11.2024, and when this respondent went to attend funeral function of said Sharanappa the present respondent came to know about the pendency of this appeal. Thus, he has purchased the suit property from his vendor against whom this appeal filed, and he wants to step into the shoes of original plaintiff in OS No.133/2021, in this appeal in the shoes of the respondent No.1, to protect his rights and possession of the suit schedule property and he is necessary and proper party to this appeal to



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adjudicate all the issues involved in the appeal and his presence is absolutely necessary to pass an order and judgment effectively and completely, with this the proposed respondent No.4 prayed for allowing the IA.

2. The appellants and respondents have filed their separate objection to IA, denying the contents of IA and grounds stated in the affidavit filed by the proposed respondent No.4 in support of IA. The appellant No.1(A) has filed her objection and affidavit stating that, she is Lrs of respondent No.1, and she knows the facts of the case, and stated that, deceased Sharanappa was not owner and in possession of the schedule property and he was not competent to alienate the suit schedule property during pendency of this appeal, the proposed respondent was well aware about the litigation between appellant and deceased and he was also aware that deceased respondent was not owner and in possession of suit property, proposed respondent colluded with deceased Sharanappa and created



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bogus registered sale deed in respect of suit schedule property, there was no family necessity, the proposed respondent never in possession of suit schedule property at any time even till today, deceased Sharanappa was not taken any step against appellant after judgment and decree passed in OS No.133/2021, thus, he proposed respondent No.4 is neither necessary party nor proper party to the case, and presence of proposed respondent is not necessary, with this appellants prayed for rejection of IA.

3. Respondent No.1 in this appeal has filed objection stating that, the present application filed by third party is not maintainable under the law and facts, and same is filed by colluding with appellant, the proposed respondent No.4 has no any right, title and interest over the suit schedule property, after disposal of the suit the proposed respondent was kept quite and there was no explanation, the application filed with a intention to dragon the matter, with this he



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prayed for rejection of application. In support of objection respondent No.1(a) has filed affidavit

4. Heard on both side.

5. The Ld counsel for the proposed respondent No.4 would contended in the argument that, the proposed respondent is purchaser of the suit property and there was no stay order staying the operation and execution of judgment and decree passed in OS No.133/2021 for 150 days after passing the said decree, and at the time of execution of registered sale deed in favour of proposed respondent the plaintiff was a absolute owner and in possession of the suit schedule property, thus, the purchaser is stepping in the shoes of the plaintiff who is vendor of the proposed respondent, and without presence of proposed respondent the appeal can not be disposed off, thus, the proposed respondent is necessary party, with this he prayed for allowing IA.

6. On the other hand, the Ld counsel for the appellants would contended that, the sale deed produced by



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the proposed respondent is bogus one and created colluding with the deceased who has no transferable title, interest over the suit schedule property, hence if the third party wants to establish his rights under the said sale deed he has to file separate suit in respect of suit schedule property. Thus, the appellants are the purchases of the suit schedule property, from the plaintiff and the plaintiff has filed OS No.133/2021 against the present appellants, and same was decreed without considering the case of present appellants, thus, the proposed respondent is not necessary party, with this he prayed for rejection of IA.

7. I have gone through the judgment and decree, passed in OS NO..133/2021, which is under challenge, and I have also gone through the grounds stated in the affidavit, filed by the proposed respondent and I have considered the objections filed by the appellants and respondents, I have perused material placed the before the court and I have also considered arguments of the Ld counsel for the parties, on



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perusal of the same the points that would arise for my consideration are as follows;

POINT NO:1 *Whether the proposed respondent is necessary party and without the presence of proposed respondent issues involved in the appeal can not be adjudicated finally and completely ?*

POINT NO:2 *What order ?*

8. My answer 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

9. **POINT NO:1** I order to answer point No.1 it is just and necessary to note here the brief facts of plaintiffs case and defence of the defendants, the present appeal is preferred by the defendant No.1's Lrs, the suit of the plaintiff (Sharanappa S/o Ghoshappa Bande) before the trial court is for declaration perpetual and mandatory injunction, he his



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absolute owner and in possession of the open site, bearing Panchayath Sy.No.13-102 (old), No.19-73 (New), measuring 60 x 60, situated in the land bearing Sy.No.504 of Kembhavi village, the plaintiff is owner of the suit property, and he is permanent resident of Almel village, which comes under Sindagi Taluk, hence the plaintiff asked the defendant No.1/appellants to look after the property of the plaintiff, the defendant No.1 misused the absence of the plaintiff in Kembhavi village and got mutated the revenue record in his name colluding with Panchayath, and without knowledge of the plaintiff the defendant No.1 sold the suit property to defendant No.3, and defendant No.3 has sold the suit property to defendant No.2 under registered sale deed dated 23.12.2004, hence the plaintiff has filed suit for declaration and perpetual and mandatory injunction, same was decreed.

10. During the pendency of suit, the defendant No.1 died and Lrs of defendant No.1(a) to 1(f)/ present appellants have filed written statement, denying the entire plaint



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averments as false and took the specific defense that the defendant No.1 is absolute owner and in possession of suit property and Panchayath records stands in the name of defendant No.1 since 1996 till filing of WS, and he has obtained construction permission from Gram Panchayath, and construction was stopped due to financial difficulties and the defendant No.1 taken other defenses which are not relevant for consideration.

11. On perusal fo the material place before the court, and grounds stated in the IA and in objection filed by the appellants and respondents, it is clear that, the present appellants are the defendants, and present respondent No.1 is the plaintiff, thus, it is well settled law that appeal is continuation of suit. When suit was decreed and the proposed respondent No.4 is the purchaser of suit property from the plaintiff, and now the plaintiff / vendor of proposed respondent is no more and plaintiff's legal heirs came on the record, now the proposed respondent wants to prove rights of



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his vendor over the suit property by standing in the shoes of his vendor, if the IA is not allowed then who has to protect the rights of the proposed respondent accrued to the proposed respondent under registered sale deed, executed by the original plaintiff. That apart, suit is filed by the plaintiff and the appellants are the defendants in the suit, thus, they have loquac-standy to object the third party application, because the proposed respondent is standing in the shoes of plaintiff, the plaintiff is dominus litus, which means, the person to whom a suit belongs to, who has real interest in the decision of the case. The dominus litus is applied to one, who though not originally a party, has made himself such intervention or otherwise, has assumed the entire control and responsibility for one side. The principle governing the power of the court under order 1 rule 10 of C.P.C is that, the court should not add a person as a defendant in a suit when plaintiff is opposed to such addition. The reason is that the plaintiff is the dominus litus. He can not be compelled to fight against a



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person against whom he does not wish to fight and against whom he does not claim any relief.

12. That apart, in the case on hand, the Lrs of plaintiff are also opposed the third party application, the question before the court is that whether theory of “dominus litus”, is come in the way of determining the point looking to the facts and circumstances of the case. The theory of dominus litus should not be over stretched in the matter of impleading of parties, because it is the duty of the court to ensure that if for deciding the real matter in dispute, a person is necessary party, the court can order such person to be implead. Merely because the, plaintiff does not choose to implead a person is not sufficient for rejection of an application for being implead. The provisions of order 1 rule 10(2) C.P.C., are very wide and the powers of the court are equally extensive. Even without an application to be implead as a party, the court may, at any stage of the proceedings order that the name of any party, who out to have been joined whether as plaintiff or defendant



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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.

13. There are two types of persons who may be added as party to the suit. (1) persons who is a necessary party i.e., in the absence of whom relief claimed in the suit cannot be granted. In other words, it means that for the grant of relief claim in a suit, a person who ought to have joined must be added, (2) the second class of persons consists of those who are proper parties i.e., whose presence may be necessary with a view to fully adjudicate upon the matters involved in the suit.

14. The law requires that, two tests are to be satisfied for determining the question as to who is necessary party. Tests are as follows;

(a) There must be a right to sum relief against such party in respect of the controversies involved in the proceedings.



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(b) no effective decree can be passed in the absence of such party.

15. The main object of order 1 Rule 10(2) of C.P.C is to avoid multiplicity of the suits(proceedings). That apart, addition of parties should not be made merely to avoid multiplicity of suits if their presence is not necessary for determining the real question. Thus, on perusal of the material placed before the court, it is clear that, proposed respondent is purchaser of suit property from the plaintiff and plaintiff is no more, his Lrs came on record and the proposed respondent No.4 is standing in the shoes of deceased plaintiff and the presence of proposed respondent is necessary, without his presence the question involved in the suit can not be decided finally and effectively, because the right on proposed respondent accrued under registered sale deed executed by deceased plaintiff when the decree in the said suit and by virtue of judgment and decree the plaintiff become absolute owner and in possession of the suit property at that time of execution of registered sale deed in favour of proposed respondent in respect of suit schedule property. The only reason which makes it necessary



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to make a person a party to an action is so that he should be bound by the result of the action. Therefore, the question to be settled must be a question in the action such can not be effectively and completely settled unless he is a party. Thus, the proposed respondent is the person must be directly and legally interest in the proceeding. Further the proposed respondent has purchased the suit property when there was no stay order against the judgment and decree in question. Further it is also clear that, when original plaintiff is died, his Lrs came on the record and the proposed respondent has purchased suit property from originally plaintiff, thus, the presence of the proposed respondent is necessary for determining the issues involved in the suit finally and effectively. Hence the proposed respondent is necessary and proper party to the appeal for determining the issue involved in the appeal. Hence I answer this point No.1 in the **Affirmative**.

16. POINT NO:2: In view of the finding on point No.1 I proceed to pass the following;

ORDER

*IA filed U/o 1 rule 10(2) of CPC by the
proposed respondent No.4 is hereby*

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allowed. Consequently, the proposed respondent No.4 is permitted to come on record as respondent No.4.

No order as to cost. For amendment of appeal memo.

(Dictated to the Stenographer-III directly on computer, transcript computerized by him, corrected, initialed and then pronounced by me in the open court, on this the 22nd day of July - 2025)

(Yamanappa Bammanagi)
II nd Addl. District and Sessions Judge
Yadgir, Sitting at Shorapur)