



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MS. JUSTICE TARA VITASTA GANJU

WRIT PETITION NO. 6212 OF 2022 (GM-CPC)

BETWEEN:

1. SMT. ERAMMA
W/O. LATE RENUKAPPPA
AGED ABOUT 56 YEARS,
2. SRI. SATISH
S/O LATE RENUKAPPA,
AGED ABOUT 32 YEARS,
3. SRI.RAKESH
S/O LATE RENUKAPPA,
AGED ABOUT 29 YEARS

ALL ARE R/AT THATTEKERE VILLAGE,
SOLURU HOBLI,
MAGADI TALUK,
RAMANAGARA DISTRICT- 562 130.

...PETITIONERS

(BY SRI. MUDDURAJ C.,ADVOCATE)

AND:

1. SRI CHANDRASHEKARAIHAH,
S/O LATE REVANNA,
AGED ABOUT 70 YEARS
2. SMT. DAKSHAYANAMMA
W/O P.R. CHANDRASHEKARAIHAH
AGED ABOUT 61 YEARS

BOTH ARE R/AT
PALANAHALLI VILLAGE
SOLURU HOBLI
MAGADI TALUK,



RAMANAGARA DISTRICT - 562 130.

...RESPONDENTS

(BY SRI. MANJEGOWDA B.V, ADVOCATE FOR
SRI.CHANDRASHEKARA K.A.,ADVOCATE)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT IN THE NATURE OF MANDAMUS AGAINST THE ORDER DTD 18.01.2022 PASSED BY THE COURT OF THE ADDL. SENIOR CIVIL JUDGE AND JMFC AT MAGADI IN O.S.NO.94/2016 ON I.A.NO.VI, VIDE AT ANNEX-C.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORAL ORDER

1. The present petition seeks to challenge an order dated 18.01.2022, passed by the Additional Senior Civil Judge And JMFC, Magadi in O.S.No.94/2016 (hereinafter referred to as 'Impugned Order'). By the impugned order, an application under Order I, Rule 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') filed by the petitioner / plaintiff seeking to implead the wife of defendant no.1 has been dismissed. It was the case of the plaintiffs that the plaintiffs and the defendants are entitled to half share each in the suit schedule properties.



2. Learned counsel for the petitioner submit that he filed a suit for partition and separate possession, in respect of the suit schedule properties. It was the case of the plaintiffs that during the pendency of these proceedings, item Nos.1 to 6 of the suit schedule properties were transferred in favour of the wife of the defendant no.1. Thus, an application under Order I, Rule 10 of CPC was filed by the petitioner/plaintiff, however the learned Trial Court dismissed the application, stating that the wife of the petitioner is not a necessary party.

3. A perusal of the application filed by the petitioner /plaintiff shows that the petitioner/plaintiff raised the issue of the execution of a Registered Gift Deed in respect of the suit schedule property item Nos. 1 to 6 on 24.08.2018, by the defendants/respondents. Paragraph-3 in this behalf of the application (duly translated) is set out below:

"3. I further submit that **while the said suit was pending before the Hon'ble High Court, with malicious intent to extinguish our right to the legal share of the suit properties** item 1 to 6 of this suit, the respondent in this suit, jointly with his wife, the prospective respondent mentioned in the interlocutory



application filed with this affidavit, illegally created a disputed registered gift deed in the name of the prospective respondent in respect of the suit properties item 1 to 6 of this suit on 24-08-2018. As aforesaid, the respondent did not have full right, authority, interest over the said claim assets to create the deed of gift in the name of the potential respondent in respect of item 1 to 6 and as per the said disputed created gift deed, the respondent also does not have any right over the said gift deed. On the basis of the said disputed created gift deed, revenue records have been created in the name of the respondent in respect of item 1 to 6 in respect of the said suit property vide M.R.No.H5/2018-19, The said matter came to my notice during the recent cross-examination of the respondent's counsel in the Hon'ble High Court and after obtaining and examining the documents from the concerned offices, I have come to know that the respondent, jointly with the prospective respondent, has created a gift deed in the name of the respondent in respect of the suit schedule properties 1 to 6 dated 24-08-2018. The said respondent is a necessary party to this suit. For the aforesaid reasons, I am filing this application with this certificate seeking an order to make the respondent to this suit."

[Emphasis Supplied]

4. The objections filed by the respondents reflect that other than a bare denial of this assertion, no other grounds have been taken. In the objections filed by the respondents / defendants, the factum of execution of the Registered Gift Deed dated 24.08.2018 is not disputed.



5. The petitioner also states in his application that in view of this transfer, the applicant is a necessary and proper party.

6. The learned Trial Court however, without examining this contention or the factum of the existence of the Registered Gift Deed, which is stated to have been filed before the learned Trial Court, goes on to dismiss the application. The reasons for this dismissal being brief, are set out below:

"Point No.1 : It is the case of the plaintiffs that during the pendency of the suit item no.1 to 6 were gifted to the proposed defendant by the defendant. In this regard, the application reflects that proposed defendant is the transferee of item no.1 to 6 of the suit sched properties. Further, the proposed defendant being the wife of the defendant, she is not entitle for share in the suit schedule properties during the life time of defendant.

8. Be it stated, **the present suit is one for partition and separate possession. It is settled principle of law that in a suit for partition the only necessary parties who should be are sharers in the properties.** In this regard, I'am supported by the decisions of Hon'ble High Court of Karnataka between Bomman Vijay Kumar and others V/s. Vijay Laxmi Kamala and others [WP.No. 82637-82650/2012 (GM-CPC)], wherein Hon'ble Court held thus;

"Therefore, in a suit for partition the only necessary parties who should be are sharers in the properties."



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In view of the law laid down by Hon'ble Court and for the above said reasons, I'am of the view that the plaintiff failed to show that proposed defendant is necessary party to be impleaded as defendant in the present suit. As such, considering the application and the pleadings, I am of the view that the plaintiff failed to show that proposed defendant is necessary party to be impleaded as defendant in the present suit. Accordingly, I answer point no.1 in the negative."

[Emphasis Supplied]

7. The question of whether a party is necessary or a proper party in terms of the provisions of Order 1 Rule 10 of the Code of Civil Procedure, 1908, is no longer *res integra*. The Supreme Court has, in ***Mumbai International Airport Private Limited Vs. Regency Convention Centre and Hotels Private Limited and Others¹*** while discussing as to who a necessary party and who a proper party is, has held that a necessary party is a person in the absence of whom no effective decree could be passed, while a proper party is a person whose presence would enable the Court to effectively adjudicate proceedings, in the following manner:

"14. The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be

¹ (2010) 7 SCC 417



just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the questions involved in the suit. **In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.**

15. A "necessary party" is a person who ought to have been joined as **a party and in whose absence no effective decree could be passed at all by the court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed. A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit,** though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. **The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.**

[Emphasis supplied]

8. The Supreme Court in the ***Sumtibai v. Paras Finance Co. Regd. Partnership Firm Beawer (Raj.)***,² case, has held that normally, in a suit for specific performance of a contract of sale of property, a stranger or a third party to the contract cannot be added as a defendant. However,

² (2007) 10 SCC 82



where the third party has rights as a purchaser of the suit schedule property, his presence would become necessary.

The relevant extract is set out below:

"9. Learned counsel for the respondent relied on a three-Judge Bench decision of this Court in *Kasturi vs. Iyyamperumal and others* - (2005) 6 SCC 733. He has submitted that in this case it has been held that in a suit for specific performance of a contract for sale of property a stranger or a third party to the contract cannot be added as defendant in the suit. In our opinion, the aforesaid decision is clearly distinguishable. **In our opinion, the aforesaid decision can only be understood to mean that a third party cannot be impleaded in a suit for specific performance if he has no semblance of title in the property in dispute. Obviously, a busybody or interloper with no semblance of title cannot be impleaded in such a suit.** That would unnecessarily protract or obstruct the proceedings in the suit. However, the aforesaid decision will have no application **where a third party shows some semblance of title or interest in the property in dispute. In the present case, the registered sale deed dated 12.8.1960 by which the property was purchased shows that the shop in dispute was sold in favour of not only Kapoor Chand, but also his sons.** Thus prima facie it appears that the purchaser of the property in dispute was not only Kapoor Chand but also his sons. Hence, it cannot be said that the sons of Kapoor Chand have no semblance of title and are mere busybodies or interlopers.

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14. In view of the aforesaid decisions we are of the opinion that *Kasturi* case is clearly distinguishable. In our opinion it cannot be laid down as an absolute proposition that **whenever a suit for specific performance is filed by A against B, a third party C can never be impleaded in that suit. In our opinion, if C can show a fair semblance of title or interest he can certainly file an application for impleadment. To take a contrary view would lead to multiplicity of proceedings because then C will have to wait until a decree is passed against B, and then file a suit for cancellation of the decree on the ground that A**



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*had no title in the property in dispute. **Clearly, such a view cannot be countenanced.***

[Emphasis Supplied]

9. A similar view has been taken by the Supreme Court in ***J.N.Real Estate Vs. Shailendra Pradhan and others***³ where after relying on the decisions in ***Mumbai International Airport*** case and the judgments of ***Kasturi Vs. Iyyamperumal***⁴ and ***Sumtibai*** case, it was reiterated that the Order 1 Rule 10(2) of the CPC does not pertain to the rights of a non-party to be impleaded but deals with judicial discretion to strike out or add parties at any stage of proceedings. It was further held that the Court will chose not to exercise the discretion if the Court is of the view that the impleadment will alter the nature of the suit or introduce a new cause of action. The relevant extract is set out below:

*"25. In Kasturi (supra), the respondent nos. 1 and 4 to 11 respectively therein, based their claim to be added as party defendants on an independent title and possession of the contracted property. **In such a backdrop, while rejecting the applications for impleadment, this Court had expounded the scope of Order I Rule 10(2) CPC and laid down certain tests***

³ 2025 SCC OnLine SC 1015

⁴ (2005) 6 SCC 733



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for determining whether a person is a 'necessary party' for the purpose of impleadment in a suit for specific performance as follows:

(i) First, that a bare reading of Order I Rule 10(2) clearly indicates **that the necessary parties in a suit for specific performance of a contract for sale or an agreement to sell, are the parties to the contract or, if they are dead, their legal representatives,** as also persons who had purchased the contracted property from the vendor....”

[Emphasis Supplied]

9.1. It was further held in the ***J.N.Real Estate*** case as under:

“27. While distinguishing *Kasturi* (supra), it was held in *Sumtibai* (supra) that if a third party can show a fair semblance of title or interest, he can file an application for impleadment in the suit for specific performance. The relevant observations read thus:

“13. As held in *Bharat Petroleum Corpn. Ltd. v. N.R. Vairamani* [(2004) 8 SCC 579 : AIR 2004 SC 4778] a decision cannot be relied on without disclosing the factual situation. In the same judgment this Court also observed : (SCC pp. 584-85, paras 9-12)

‘9. **Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed.** Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. **These observations must be read in the context in which they appear to have been stated.** Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as



statutes. In London Graving Dock Co. Ltd. v. Horton [[1951] A.C. 737 (HL)] (AC at p. 761) Lord MacDermott observed : (All ER p. 14 C-D) [...]'

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14. In view of the aforesaid decisions we are of the opinion that Kasturi case [(2005) 6 SCC 733] is clearly distinguishable. In our opinion it cannot be laid down as an absolute proposition that whenever a suit for specific performance is filed by A against B, a third party C can never be impleaded in that suit. In our opinion, if C can show a fair semblance of title or interest he can certainly file an application for impleadment. To take a contrary view would lead to multiplicity of proceedings because then C will have to wait until a decree is passed against B, and then file a suit for cancellation of the decree on the ground that A had no title in the property in dispute. Clearly, such a view cannot be countenanced."

[Emphasis supplied]

28. This Court in Mumbai International Airport (supra) **was also of the view that different situations require the application of different facets of Order I Rule 10(2)** and consequently, held that there was no conflict between the decisions of this Court in Kasturi (supra) and Sumtibai (supra). **It was reiterated that that Order I Rule 10(2) CPC did not pertain to the 'right' of a non-party to be impleaded as a party but deals with the 'judicial discretion' of the court to strike out or add parties at any stage of the proceeding. In exercising this judicial discretion, courts must act according to reason and fair play and not according to whims and caprice.**

29. It was observed that the court may exercise discretion in impleading a person who is **a 'proper party' upon an application by a non-party to the suit for specific performance. If the court is of the view that the impleadment of such a proper party** will alter the nature of the suit or introduce a new cause of action, it may either refuse to implead such person or order for his impleadment on certain conditions. However, even otherwise, the court would not be precluded from impleading a 'proper party' unconditionally in its discretion.



[Emphasis Supplied]

10. It is no longer *res-integra* that the provisions of Order I to Rule 10 of CPC, requires that the parties who are either necessary or proper, for a decision in the *lis* should be impleaded as parties. The suit has been filed for partition and separate possession. Undisputably, the defendant has during the pendency of the proceedings, transferred rights in the part of the suit schedule properties to his wife, who is not a party to the present proceedings. The factum of this transfer would make the applicant necessary party. However, the learned Trial Court not examined this nor has examined the Registered Gift Deed, which is been filed by the petitioner.

11. Since the factum of transfer of the part of the suit schedule properties is not disputed by the respondent and the applicant has obtained rights to part of the suit schedule properties. Thus, the applicant would be a necessary party to the present proceedings. Accordingly, the petition is allowed.



12. Consequently, the application filed by the petitioner is allowed. The wife of defendant no.1 is directed to be impleaded as a party.

13. Since the suit is already at the evidence stage, the learned counsel for the parties submit that they will not take any unnecessary adjournments before the learned Trial Court. The parties are bound down by the statement made by their counsel today.

14. It is clarified that this Court has not examined the matter on merits. The rights and contentions of both parties are kept open to be agitated before the Trial Court.

**Sd/-
(TARA VITASTA GANJU)
JUDGE**

JJ
List No.: 2 Sl No.: 9