



CNR: KAHC010275102022

NC: 2026:KHC:38148
W.P. No.12417/2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 23RD DAY OF JULY, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.12417/2022 (GM-CPC)

BETWEEN:

SRI. SRIDHAR .V
S/O VENKATA SUBBA RAO
AGED ABOUT 64 YEARS
R/AT NO.C-145, INDUSTRIAL ESTATE
YADAVAGIRI, MYSURU-570020.

...PETITIONER

(BY SRI. O. SHIVARAMA BHAT, ADV.,)

AND:

1. SMT. BEENA PRASAD
W/O SRI PADMA PRASAD
AGED ABOUT 52 YEARS
DEALER I.O.C.L.
PROPRIETOR M/S. ASHOKA SERVICE STATION
R/AT NO.34, RAGAVENDRA MUTT ROAD
JAYALAKSHMIPURAM
MYSURU-570012.

2. SRI. VENKATESH
S/O LATE KULLAIAH
AGED ABOUT 36 YEARS
R/AT N. BELATHUR
ANTHARASANTHE HOBLI
H D KOTE TALUK
MYSURU DISTRICT
MYSURU-570025.

...RESPONDENTS

Digitally signed
by RUPA V
Location: HIGH
COURT OF
KARNATAKA



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(BY SRI. R.S. RAVI, SR. COUNSEL FOR
SRI. AKARSH KUMAR GOWDA, ADV., FOR R2
V/O/DTD:22.11.2024, NOTICE TO R1 IS H/S)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH ORDER DTD.31.3.2022 PASSED BY THE TRIAL COURT ON IA NO.1/2021 IN O.S.NO.28/2020 ON THE FILE OF ADDITIONAL CIVIL JUDGE AND JMFC, H.D. KOTE FILED UNDER ORDER 1 RULE 10(2) OF CIVIL PROCEDURE CODE VIDE ANNEXURE-A & ETC.

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

CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

ORAL ORDER

This writ petition is filed challenging the order dated 31.03.2022 passed on I.A.No.1/2021 in O.S.No.28/2020 by the Additional Civil Judge and JMFC, H.D.Kote (for short, 'the Trial Court').

2. Sri.O.Shivarama Bhat, learned counsel appearing for the petitioner submits the petitioner has filed a suit against the respondent No.1 for recovery of possession, arrears of rent and other reliefs. In the said suit, the evidence was concluded and the matter was



posted for arguments. At that stage, the respondent No.2 had filed an application for impleadment which came to be allowed by the Trial Court erroneously without appreciating the fact that the property claimed by the respondent No.2 is altogether different from the suit schedule property. It is submitted that the very respondent No.2 had instituted a suit in O.S.No.152/2020 against the respondent No.1 herein and her husband Sri.S.N.Padmaprasad and in the said suit, while rejecting the application for temporary injunction, the Trial Court had specifically taken note of the fact that there is a discrepancy between the boundaries claimed. It is further submitted that another suit filed by Sri.B.S.Jagadish in O.S.No.104/2012 against the respondent No.1 and others was decreed and the appeal is pending. It is also submitted that the respondent No.2 is a stranger to the suit schedule property and cannot be a necessary and proper party to adjudicate the *lis* between the petitioner and the respondent No.1. In support of his contentions,



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he placed reliance on the decision of the Hon'ble Supreme Court in the case of **MUMBAI INTERNATIONAL AIRPORT PVT. LTD. Vs. REGENCY CONVENTION CENTER AND HOTELS PVT. LTD. AND ORS.**¹ and contended that it is the plaintiff who has to decide against whom the suit has to be filed and a proper and necessary party is a person whose presence would enable the Court to completely, effectively and adequately adjudicate upon all the matters in the suit and in the instant case, the sale deed of the respondent No.2 indicates different properties altogether and he is neither a necessary nor proper party to the suit. It is contended that entertaining the application at the fag end of the proceedings is impermissible as observed by this Court in the case of **SR. THERESA AND OTHERS Vs. SMT.SUFIYA SHAMIR AND OTHERS**² and seeks to allow the petition.

¹ (2010) 7 SCC 417

² W.P.No.52869/2018 dt. 09.01.2019



3. *Per contra*, Sri.R.S.Ravi, learned Senior counsel for appearing for Sri.Akarsh Kumar Gowda, learned counsel for the respondent No.2 supports the impugned order of the Trial Court and submits that the suit filed by the petitioner is a collusive suit between the petitioner and the respondent No.1. The written statement of the respondent No.1 in the suit indicates that the defendant has admitted the case of the plaintiff. However, it can be noticed from the stand taken by the very same defendant in O.S.No.152/2020 that the said defendant and her husband are the owners of the property. Hence, when a fraud is pointed out, this Court is required to consider the said aspect as well and permit the respondent No.2 to defend the suit in order to bring these facts on record so that the Court can consider the same while considering the prayer of the petitioner for granting the relief sought in the plaint. It is submitted that one Sri.Jagadish is the absolute owner of the property. He alienated the property in favour of one Arun M. and from the said Arun M., the



respondent No.2 had purchased the property. Though the property number appears to have some variation but the respondent No.2 is also claiming the same property and therefore, the respondent No.2 is the proper and necessary party to the suit. Hence, he seeks to dismiss the petition.

4. I have heard the arguments of the learned counsel appearing for the petitioner, the learned Senior counsel appearing for the respondent No.2 and meticulously perused the material available on record.

5. The petitioner has filed O.S.No.28/2020 seeking the relief of judgment and decree for recovery of possession from the defendant and also for the arrears of rent. The plaint averments indicate that the plaintiff claims to be the owner of the suit schedule property i.e. site khatha janger No.14/1, property No.14/1, Sy.No.18 situated at Yarahalli, Handpost, Kasaba Hobli, H.D.Kote Taluk with a chakkubandi. In the said suit, the defendant



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No.1 filed a detailed written statement. The parties led the evidence and the matter was posted for arguments. At that stage, the respondent No.2 had filed an application under Order I Rule 10(2) of the Code of Civil Procedure, 1908 (for short, 'the CPC') seeking to implead him as defendant No.2. The said application was opposed by the plaintiff. The Trial Court, under the impugned order, taking note of the earlier suit in O.S.104/2012, recorded that the appeal is pending before this Court and allowed the application. It is required to be noticed that the suit of the plaintiff is for a specific prayer to recover the possession and arrears of rent from the defendant in the said suit and the property in the said suit is site No.14/1, khata No.14/1 in Sy.No.18 situated at Yarahalli, Handpost, Kasaba Hobli, H.D.Kote Taluk. It is the specific case of the proposed defendant that he has purchased the property from one Arun M. as per the registered sale deed dated 16.08.2019 and a perusal of the schedule to the deed indicates that the proposed defendant is the owner of the



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property of all that piece and parcel of the property bearing assessment / khata No.409, (old PID No.152200100806100602), situated at Ward No.19, Yarahalli, H.D.Kote Purasabha limits, Kasaba Hobli, H.D.Kote Taluk, Mysore (D). A perusal of the chakkubandi of the sale deed of the respondent No.2 and the schedule to the sale deed of the petitioner-plaintiff as well as the schedule to the plaint, clearly indicate that the property claimed by the petitioner-plaintiff and the respondent No.2 are altogether different. Insofar as the contention that the suit is a collusive suit between the petitioner and the defendant, in my considered view, the said issue cannot be gone into in the present proceedings.

6. Admittedly, the respondent No.2 had also filed suit in O.S.No.152/2020 and the said suit is pending adjudication before the Civil Court which is filed against Sri.S.N.Padmaprasad as well as the respondent No.1 herein. It is required to be noticed that there is a dispute



between Sri.Jagadish and Sri.S.N.Padmaprasad, respondent No.1 herein and others and the said dispute is in RFA No.1614/2015. Be that as it may, a perusal of the pleadings in the present plaint and the other suits clearly indicate that the property claimed by each of the parties are distinct and different. The relief in the present suit filed by the petitioner is for recovery of possession with regard to the specific property referred as suit schedule property and against the respondent No.1. In my considered view, the respondent No.2 cannot be called as a proper and necessary party to the suit. The Hon'ble Supreme Court, in the case of **MUMBAI INTERNATIONAL AIRPORT PVT. LTD.** referred *supra*, has held at paragraphs 13 to 15 as under:

"13. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against



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the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure ("the Code", for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:

"10. (2) Court may strike out or add parties.— The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, 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, be added.

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 just, direct that any of the following persons may be added as a party: (a) any person who ought to have been*



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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*



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person a necessary party or a proper party to the suit for specific performance."

7. Keeping in mind the enunciation of law laid on by the Hon'ble Supreme Court and taking note of the decision of this Court in the case **SR. THERESA AND OTHERS** referred *supra*, I am of the considered view that entertaining the application by the Trial Court at the fag end of the proceedings is incorrect and the respondent No.2 is neither a necessary nor proper party to the suit. It is required to be noticed that if the suit is decreed, definitely the said decree would not bind the defendant No.2. Accordingly, I proceed to pass the following:

ORDER

- (i) The writ petition is allowed.
- (ii) The impugned order dated 31.03.2022 passed on I.A.No.1/2021 in O.S.No.28/2020 by the Additional Civil Judge and JMFC, H.D.Kote, is



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set aside. Consequently, the application filed
by the respondent No.2 is rejected.

No order as to costs.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

RV
List No.: 1 Sl No.: 29