



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF JULY, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO. 19673 OF 2026 (GM-CPC)

BETWEEN:

SRI H.E.KUMARASWAMY
S/O LATE ERAPPASHETTY
AGED ABOUT 63 YEARS,
AGRICULTURIST,
RAT HOSAHALLI VILLAGE, ALDUR
CHIKKAMAGALURU TALUK AND
DISTRICT-577 111

...PETITIONER

(BY SRI. GIRISH, ADVOCATE)

AND:

1. M.R.RUKMINI
W/O RENUKARYA,
AGED ABOUT 49 YEARS
R/AT HOSAHALLI VILLAGE,
ALDUR POST,
CHIKKAMAGALURU TALUK AND
DISTRICT-577 111
2. SRI. H.S. THYAGARAJ.
AGED ABOUT 54 YEARS,
S/O LATE SOMASHETTY H.S
3. SMT. ROOPA D.T.
AGED ABOUT 43 YEARS,
W/O SRI. H.S. THYAGARAJ
BOTH ARE RESIDING AT
M.B. HALLI VILLAGE,
R/AT HOSAHALLI VILLAGE, ALDUR POST,



CHIKKAMAGALURU TALUK AND
DISTRICT-577 111

...RESPONDENTS

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO-
QUASHING THE ORDER DATED: 22.06.2026 PASSED ON IA NO. 5 IN OS NO. 88/2025 BY THE II ADDL. SENIOR CIVIL JUDGE AND JMFC COURT CHIKKAMAGALURU VIDE ANNEXURE-J.

THIS PETITION, COMING ON FOR FINAL HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

ORAL ORDER

Aggrieved by the order dated 22.06.2026 passed in I.A.No.5 in O.S.No.88/2025 by the II Additional Senior Civil Judge and JMFC Court, Chikkamagaluru, the petitioner, who is the proposed impleading applicant, is before this Court.

2. Respondent No.1 is the plaintiff, who has filed a suit seeking specific performance of an agreement of sale dated 17.01.2024, allegedly executed by respondent Nos.2 and 3. In the said suit, the petitioner has filed I.A.No.5 under Order 1 Rule 10 read with Section 151 of the CPC, seeking permission to come on record as defendant No.3 in the suit. In the affidavit filed in support of the application, it is stated that the plaint schedule item No.2 is ancestral property and that the said



property is in his possession, cultivation and enjoyment. The first defendant has no right or title to sell the said property. The plaintiff and defendants are colluding to obtain a wrongful benefit by creating a false agreement and have come up with the suit to get the relief of specific performance, since the said property is ancestral property. Hence, the petitioner coming on record is proper and necessary in the facts and circumstances of the case. That came to be dismissed by the Court by the impugned order.

3. While dismissing the application, the trial Court observed that a careful perusal of the applicant's affidavit shows that, except for a bald assertion that the property is ancestral in nature, no material whatsoever is placed before the Court to prima facie substantiate such a claim. No revenue records, title deeds, genealogical records, or any other documents are produced to demonstrate that the applicant has any existing right, title, or interest in Item No.2 of the plaint schedule property. Similarly, no material is produced to establish his alleged possession and cultivation of the property. Even assuming, for the sake of argument, that the applicant claims some independent right over the property, such a claim



cannot be adjudicated in the present suit without converting the proceedings into a comprehensive title dispute.

4. The trial Court had relied on the judgment of the Apex Court in case of ***Kasturi Vs. Iyyamperumal and Others***¹ and further observed that the only allegation made is that the plaintiff and the defendants have colluded. Such a bald allegation, by itself, cannot confer upon the applicant a right to be impleaded in a suit to which he is otherwise a stranger. The applicant, if so advised, is always at liberty to work out his alleged rights before a competent forum in accordance with law. However, the pendency of such an alleged claim does not make him either a necessary party or a proper party in the present suit for specific performance. The applicant has already instituted O.S.No.567/2025 against defendant No.1 in respect of the very same property, seeking a declaration of title and a permanent injunction. Thus, the applicant is claiming an independent right over the suit property and has already availed an appropriate remedy for the execution of his alleged rights.

¹ (2005) 6 SCC 733



5. It is further observed that since the applicant's claim is the subject matter of a separate suit, his presence is not necessary for deciding the issues involved in the present suit for specific performance. It is observed that the applicant is neither a necessary party nor a proper party to the present proceedings. The Court has also observed that the plaintiff and defendants have arrived at a settlement before the Mediation Center, which does not, by itself, confer any right upon the applicant to seek impleadment. Any settlement arrived at between the parties to the contract would be subject to the rights, if any, that may be established by the applicant in the said independent proceedings. Consequently, the proposed settlement between the plaintiff and defendants cannot be a ground to implead the applicant in the present suit. Accordingly, the trial Court has dismissed the same.

6. Learned counsel appearing for the petitioner has relied on the judgment of the Apex Court in case of ***M/s. J N Real Estate Vs. Shailendra Pradhan and Others***². Paragraph Nos. 30 to 33 read thus:

² 2025 INSC 611



"30. Having discussed the aforesaid position of law, it would be apposite to look into the reasoning which was adopted by the High Court in its impugned decisions. It appears from the line of reasoning that the High Court entertained a serious doubt on the genuineness of the entire transaction between one (Late) Mr. Sameer Ghosh i.e., original defendant no. 3 and the appellant herein i.e., original defendant No.8. (Late) Mr. Sameer Ghosh is said to have obtained a probate on the strength of one particular will and on the strength of that probate he is said to have executed first, an agreement of sale in favour of the original defendant no. 8 and thereafter, a sale deed with respect to the suit property. According to the High Court, this transaction is doubtful. The High Court has gone further to say that the documents i.e., the agreement and the sale deed are also doubtful.

31. In such circumstances referred to above, the High Court thought fit to take the view that the appellant herein is neither a necessary party nor a proper party.

32. Having regard to the material on record, we are of the view that the High Court should not have interfered with the order passed by the Trial Court impleading the original defendant no. 8 (appellant herein) as one of the defendants in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India, 1950. We say so because the genuineness of the transaction, if any, including the genuineness of the documents is to be looked into in the course of the trial. A party who is seeking impleadment may not be a necessary party but still, could be termed as a proper party. There is a fine distinction between a necessary party and a proper party. A necessary party is a person in whose absence no effective decree could be passed at all by the court. Whereas a proper party is one who though not a necessary party is a person whose presence would enable the court to effectively and adequately adjudicate upon all matters in dispute in the suit.

33. We need not say anything further in the matter. We may only say that insofar as the transaction between (Late) Mr. Sameer Ghosh and the original defendant no. 8 (appellant herein) is concerned, the same shall be a subject matter of trial. We do not express any opinion in this regard at this point of time. We may only say that the presence of the appellant in the suit is required for proper and effective adjudication of the dispute in the suit. We say so while giving additional regard to the fact



that the original plaintiff has not opposed the impleadment of the original defendant no. 8 in his suit. We keep all contentions open for all the parties concerned to be canvassed before the Trial Court."

7. Relying on this judgment, it is submitted that, in the light of the latest judgment, in a suit for specific performance, a third party can be impleaded, and there is no bar. The law has changed from the judgment passed by the Apex Court in ***Kasturi's*** case, and this aspect was not considered by the learned Judge.

8. Having heard the learned counsel for the petitioner, perused the material on record. The petitioner herein has filed an independent suit for declaration against the defendants, and the said suit is pending consideration. The rights of the petitioner with regard to his title to the property are yet to be determined by the trial Court in his suit for declaration, which is pending consideration. This Court has perused the I.A. filed by the petitioner herein. In the application, except for stating that the defendants and the plaintiffs are colluding and want to defeat the interest of the petitioner herein, nothing else has been stated in the said affidavit. There is no mention of how the petitioner has acquired the right and title to the property,



how he has a better title, how the defendant does not have title to the property, or how he is not a proper party to the proceedings. With the bald averments made by the petitioner, the trial Court rightly held that the petitioner is neither a necessary nor a proper party and dismissed the application. The judgment relied on by the petitioner in ***M/s. J N Real Estate***'s case, referred supra, has no application to the facts and circumstances of this case. In that view of the matter, this Court does not find any reason to interfere. Hence, this Court is passing the following:

ORDER

- i. Accordingly, the writ petition is ***dismissed***.
- ii. All I.As. in this petition shall stand closed.

SD/-
(LALITHA KANNEGANTI)
JUDGE