

In the court of the II Addl. Senior Civil Judge & CJM
Mangaluru. D.K.

11-03-2022

ORDER ON I.A.No.II

The learned counsel for plaintiffs filed I.A.No.II u/o I Rule 10(2) and Section 151 of CPC to implead the wife of the 1st defendant as 3rd defendant .

02. The gist of the application is that,

It is submitted in the annexed affidavit to the I.A.No.II that, during pendency of the suit, the 1st defendant has transferred the suit schedule property in favour of his wife Smt. Jayalalitha by way of Settlement Deed No.383/20-21 dated:08-06-2020. The said fact was disclosed by the defendant No.1 in his written statement at para No.11 page No.4. The said transaction is not binding upon the plaintiffs and it is a sham document. Thus, the proposed defendant is necessary party. Hence, this application is filed.

03. Mr. Dayananda Rai K., Advocate filed vakalath on behalf of proposed defendant and

filed objection submitting that, proposed defendant is a third party and not a co-owner of the suit schedule property. The suit is one for partition. The proposed defendant is not a necessary party to the suit. Hence, it is prayed to dismiss the application.

04. Heard both sides.

05. The following points arise for my consideration;

- 1) Whether the plaintiffs make out sufficient cause to add proposed defendant in the above suit u/o I Rule 10(2) r/w Section 151 of CPC?
- 2) What Order ?

06. My findings to the above points are as under:

Point No.1 : In the Affirmative.

Point No.2 : As per final order for the following;

REASONS

07. Point No.1:- Admittedly, the 1st defendant has executed Settlement deed dated: 08-06-2020 registered as document No.MGC-1-00383-20-21 in CD No.MGCD 1015 of Book No.I

in the office of the Sub-Registrar, Mangaluru City transferring the suit schedule property in favour of his wife Smt. Jayalalitha during the pendency of the suit. Though she claims to be a third party to the suit for partition, without her presence, the court cannot pass an effective decree at all. By virtue of the transfer of suit schedule property, under registered Settlement Deed, she may claim legal interest in the property. Further, when the 1st defendant has taken a contention of transferring the property in favour of his wife by virtue of registered settlement deed, the plaintiffs alleged that, by collusion 1st defendant and 2nd defendant had executed instrument, by which the third party proposed defendant may set up a right of co-sharer in the schedule property. In such circumstances, she is a necessary party to the suit. Accordingly, I answer point No.1 in the **Affirmative.**

08. Point No.2:- In view of the foregoing observations and discussions, I proceed to pass the following;

ORDER

I.A.No.II filed by the plaintiffs u/o I Rule 10(2) and Section 151 of CPC is hereby allowed.

The plaintiffs shall add the proposed defendant as defendant No.3 in the above case and amend the plaint accordingly.

The plaintiffs shall furnish the amended plaint in the office.

After amending the plaint and filing the amended plaint, issue suit summons to the defendant No.3.

Call on:25-05-2022.

**II Addl. Sr. Civil Judge & CJM
Mangaluru, D.K.**