

O.S.No.89/2023

04.01.2025

ORDERS ON INTERLOCUTORY APPLICATION No.I

The counsel for the plaintiff has filed this application under Order I Rule 10 r/w Section 151 of Code of Civil Procedure and prays to permit the plaintiff to implead the Chief Engineer (v) Transmission Sector Karnataka Power Transmission Corporation(Ka Vi Pra Ni Ni), Hassan, Karnataka State as defendant No.4 in the interest of justice.

2. The application is supported with an affidavit sworn by the plaintiff and stated that the plaintiff had filed the suit against the defendant No.1 to 3 for permanent prohibitory injunction as well as mandatory injunction against the defendants. It is further stated that during the pendency of the above suit for trial the defendant No.1 issued a notice with copy to the plaintiff and asked the institution sought be to impleaded to resolve the dispute and submit the report. Therefore, it appears that the defendant sought to be impleaded is the concerned/necessary party to adjudication the

above matter. It is further stated that the defendant sought to be impleaded is either taken up the matter nor resolved the dispute till date. Therefore, any order and/or Judgment passed in this suit by this court in the absence of the persons sought to be impleaded it will directly affect the legal right, title and interest of the plaintiff. Hence, prays to allow this application.

3. After filing this application, notice was issued to proposed defendant, he appeared through their counsel but, failed to file objection to present application. Further, the defendants on record are also not filed any objection to the present application.

4. Heard on plaintiff's side and defendants side taken as heard.

5. Upon hearing arguments and perusal of material placed on records the following points would arise for consideration of this court;

1. Whether the application filed by the plaintiff under order I rule 10 R/w Section 151 of Code of Civil Procedure is deserves to be allowed ?

2. What Order ?

6. Upon hearing arguments and on perusal of the materials on record, this court has proceeds to answer the aforesaid points as hereunder;

POINT No.1: In the Negative.

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

R E A S O N S

7. **POINT No.1:** The plaintiff has filed this suit for permanent prohibitory injunction and sought to restraining the defendant No.1 and 2, their representatives or any one claiming under them from encroaching the schedule 'B' property acquired by the plaintiff in terms of Indenture of Exchange or to cause any waste, loss, damages etc of the schedule 'B' property. The plaintiff also sought for the relief of mandatory injunction against the defendant No.1 and 2, their representatives or anyone claiming under or through them from restoring intact the schedule 'B' property as referred in the Indenture of Exchange dated 26.03.2015, registered as document No.MGT-1-11406-2014-15, stored in CD No.MGTD364, on the file of Sub-Registrar of Mangaluru Taluk, failing which the

same shall be done through the process of this court making the defendant No.1 and 2 liable for cost and consequences including the cost of this suit.

8. Now, the present case is set down for plaintiff evidence. At this stage, the plaintiff has filed this application and sought permission to implead the above institution as proposed defendant No.4 in the present case. On the other hand, the proposed defendants or other defendants on record are not filed any objection to the present application.

9. In this regard, court has perused the provisions relating to implead the parties as per Order 1 Rule 10(2) of CPC. As per Order I rule 10(2) of Code of Civil Procedure Code, the court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appears to the court to be just, order that, the name of the any party ought to be joined, whether 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.

10. Admittedly, the present suit is for permanent injunction and mandatory injunction against the defendant No.1 to 3. The plaintiff sought above relief from defendant No.1 and 2 only. So far as impleading application is concerned, it is the third party and against it there is no relief is sought by the plaintiff in this suit. Further there is no allegation against the proposed defendant No.4 by the plaintiff. Therefore, the proposed defendant is not necessary or proper parties.

11. Further, as per the decisions reported in the case of Sri. Vardhaman stanakvisi Jain Sarvak Sanga V/s Chandrakumar and another, ILR 1984 Kar 889. The Hon'ble court observed that if no relief is sought against third party, question of making them as necessary party would not arise.

12. No doubt, the plaintiff is the dominus litis and he is master of his case, but he cannot be compelled to fight against a person, against whom he does not wish to fight and against whom he does not claim any relief.

The plaintiff with a specific cause of action has filed this suit against the defendant No.1 to 3, whom he alleges that the defendants have encroached 17.75 cents of immovable property owned by the plaintiff without any authority. Hence, the plaintiff filed this suit against the defendant No.1 to 3 with specific relief with a specific cause of action. No doubt, in the present application the plaintiff contended that the defendant No.1 had issued a notice with copy to the plaintiff and asked the institution sought to be impleaded to resolve the dispute and submit report. But, the plaintiff has not produced any notice issued by the first defendant to the plaintiff. Further, party can not be impleaded in a suit as for mere asking. There is no cause of action against the proposed defendant No.4. Further, there is no relief is sought by the plaintiff from the proposed defendant No.4 in this suit. Therefore, person to be impleaded as proposed defendant No.4 is not necessary for the purpose of proper adjudication of the present suit. Accordingly, this court answer point No.1 in the negative.

13. **POINT No.2:** In view of the answer to point No.1,

this court proceed to pass the following;

ORDER

The Interlocutory Application No.I filed by the plaintiff under Order I rule 10 R/w Section 151 of Code of Civil Procedure is hereby dismissed.

No order as to cost.

For plaintiff evidence finally.

Call on 22.01.2025.

Sd/-

**II ADDITIONAL CIVIL JUDGE & JMFC,
MANGALURU, D.K.**