

KAKL030018492015



**IN THE COURT OF THE II- ADDL. CIVIL JUDGE &
J.M.F.C., AT KOLAR.**

: PRESENT:

Smt. Shruthi Shree. S, B.A. L.L.B.,
II Addl. Civil Judge & JMFC,
KOLAR.

Dated this the 1st day of SEPTEMBER-2021

O.S. NO.468/2015

PLAINTIFF/S: **Chikka Konappa & another**
(Rep: by Sri. **S.D.C.** Adv.)

-V/s-

DEFENDANT/S: **Jayamma & others**
(Rep: by Sri. **T.V.R.** Adv.)

IN I.A. NO.12

APPLICANT/S:
Proposed Defendants:

6. **Anithamma,**
7. **Manjunatha**
8. **Lakshmi**

-V/s-

OPPONENT/S: **Chikka Konappa & another**

**ORDERS ON I.A. NO.12 FILED BY THE PROPOSED
DEFENDANT NO.6 TO 8 UNDER ORDER 1 RULE 10(2)
OF CODE OF CIVIL PROCEDURE**

The proposed defendant No.6 to 8 have filed the present I.A. under Order 1 Rule 10(2) CPC seeking to implead them as necessary parties in the suit.

2. In the accompanying affidavit it is contended that the plaintiffs have filed the present suit for the relief of Partition and Separate Possession, wherein they have claimed their respective shares in the suit schedule property in which even the proposed defendant's shares are included. Also at the time of filing of the suit, plaintiffs have not made them as parties, though they are necessary in the suit, as they are in joint possession and enjoyment of the suit schedule property. Therefore, they contend that by suppressing the materials facts, plaintiffs have filed the present suit seeking for the relief of Partition and Separate Possession with respect to suit schedule property and if they are not made as necessary parties in the suit, their right over the suit schedule property would be put at stake. Accordingly, seeks to allow the I.A.

3. Per-contra, plaintiff No.3 and 4 have filed objections contending that the proposed defendants do not have any right to claim over the suit schedule property and also they are not necessary parties as plaintiffs and defendants belong to Adi Dhraida by caste, but however proposed defendants belong to Thigalaru by caste and therefore there arises question of relationship between the present parties and proposed defendant No.6 to 8.

4. Also the proposed defendant No.6 to 8 have no right or possession over the suit schedule property and unreasonably they have filed the present application producing false Genealogical Tree. Therefore, there is no material to appreciate the application and accordingly seeks to dismiss the I.A.

5. Heard.

6. The following points arise for the determination of this court

POINTS

1. Whether the proposed defendant No.6 to 8 / Applicants have made out grounds to allow the application?

2. What Order?

7. The findings of this Court on the above points are;

Point No.1 : In the **AFFIRMATIVE**

Point No.2 : As per final **ORDER**,
for the following;

REASONS

8. **POINT NO.1:** Admittedly, the present suit is one for Partition and Separate Possession, wherein plaintiffs along with defendants claim themselves to be having common ancestor namely Gangappa who is alleged to have two wives namely Muniyamma and Obalamma. Through Muniyamma, defendant No.1 to 5 are stated to be born and whereas through 2nd wife Obalamma, 1st plaintiff and 2nd plaintiff are stated to be born. But the Genealogical Tree produced by the proposed defendant No.6 to 8 reveals that the 2nd wife of Gangappa had five children out of whom plaintiffs are two children and three more children are not impleaded in the present suit.

9. Further it is necessary to appreciate that neither other children of such deceased brothers of plaintiffs nor any other parties are brought on record in this suit.

However, plaintiffs contend that they belong to Adi Dhraida by caste, whereas the proposed defendants belong to Thigalaru by caste, which fact is at this juncture unknown and irrelevant for this court.

10. However, it is necessary to appreciate by way of Genealogical Tree produced by the proposed defendant No.6 to 8, which evidences that they belong to Genealogy of one Konappa who is none-other than brother of plaintiffs which clearly reveals that they are also belonging in-turn to the genealogy of erstwhile ancestor Gangappa through whom plaintiffs and defendants claim their right over the suit schedule property. This material is very much evident and sufficient to substantiate that proposed defendant No.6 to 8 are necessary and also proper parties to be impleaded in the suit for arriving at final conclusion regarding shares that are to be allotted in favour of plaintiffs with respect to suit schedule property. Therefore, the proposed defendant No.6 to 8 have made out sufficient grounds before this court to appreciate that they are proper and necessary parties in order to arrive at finality of

dispute between the parties in the present suit. Accordingly, **POINT NO.1** is answered in the **AFFIRMATIVE**.

11. **POINT NO.2:** For the forgoing reasons, this court proceeds to pass the following;

ORDER

I.A. No.12 filed by proposed defendant No.6 to 8 under Order 1 Rule 10(2) C.P.C. is hereby allowed.

Consequently, proposed defendant No.6 to 8 are impleaded as defendant No.6 to 8 in the suit.

(Dictated to the Stenographer, transcribed and computerized by him, revised, corrected and then pronounced by me in the open Court on this the **1st day of SEPTEMBER-2021**)

(SHRUTHI SHREE. S.)
II Addl. Civil Judge & JMFC,
KOLAR.