

KABG040012642021



06.01.2023

O.S.No.769/2021

ORDER ON I.A.NO.IV

This is an application filed by the plaintiff against the defendants U/O.1 Rule 10(2) R/w. Sec.151 of C.P.C. seeking to implead the proposed defendants No.6 to No.9 as defendants No.6 to No.9.

2. The applicant has stated that his father was the owner of the suit property. Accordingly, his name was mutated in the revenue records. The father of the plaintiff died on 08.02.1996 and the mother of the plaintiff died on 12.06.2020. The father of the plaintiff during his lifetime executed a Will dated 05.01.1985 in the presence of two witnesses, by name, Santu Shatupa Kanolkar and Vaiju Kallappa Bharamuche. One S. N. Kagawad was the scribe of the said Will. The suit property is the absolute property of the father of the plaintiff. After the death of the father of the plaintiff, the property was succeeded by the plaintiff under the Will. In the said Will, the life interest was created in favour of the mother of the plaintiff. After the death of the mother of the plaintiff, the plaintiff became the owner in

possession of the suit property. The plaintiff has filed the present suit seeking relief of Declaration. The defendant No.3 was made as party, but summons to him returned with an endorsement that the defendant No.3 is dead. The proposed defendants No.6 to No.9 being his legal heirs are necessary to this suit. Hence, she prayed to allow the application.

3. The proposed defendants No.6 to No.9 have filed objections to the said application. They have stated that they are not necessary parties to the suit and there is no cause of action against them. They have denied the contents of the affidavit. They have stated that the defendant No.3 is the full sister of the plaintiff and the suit is filed against the dead person. Hence, he prayed to reject the application.

4. Heard both sides. Perused the entire materials available on record.

5. The defendants have admitted that the defendant No.3 is the sister of the plaintiff. The plaintiff has filed this suit seeking relief of Declaration and Injunction on the basis of the alleged Will executed by her father in her favour. Therefore, the defendant No.3 is a necessary party. But, the defendant No.3 died prior to institution of this suit. Hence, the legal representatives of defendant No.3 i.e., the proposed defendants No.6 to

No.9 are necessary parties to this suit. The proposed defendants No.6 to No.9 have denied the alleged Will and denied the averments in the plaint. Since the defendant No.3 is died before institution of this suit, therefore the proposed defendants No.6 to No.9 are required to be impleaded as parties. Hence, the applicant has made out grounds to allow the application. Hence, I proceed to pass the following :

ORDER

The I.A.No.IV filed by the plaintiff U/O.1 Rule 10(2) R/w. Sec.151 of C.P.C. is hereby allowed.

The plaintiff is permitted to implead the proposed defendants No.6 to No.9 as parties to this suit.

The plaintiff is directed to carryout the necessary amendment as prayed in I.A.No.III.

No order as to costs.

**Prl. Civil Judge & J.M.F.C.,
Belagavi.**

For amendment and amended plaint, call on
23.01.2022.

**Prl. Civil Judge & J.M.F.C.,
Belagavi.**