

KABG300007332023



**IN THE COURT OF SENIOR CIVIL JUDGE,
BAILHONGAL, AT: BAILHONGAL**

PRESENT:

**Shri. Ravi Babu Chawan,
B.A.LL.B.
Senior Civil Judge, Bailhongal.**

O.S. No. 194/2023

Dated this the 9th Day of September, 2025

1) Shri. Shivappa S/o Mudakappa Yadawad
and others,

.....Plaintiffs

(By Sri. M.S.B., Advocate)

-Vs.-

1) Smt. Mallavva W/o Basappa Yadawad
and others,

.....Defendants

(D1 and 2 -in person)
(D3, 4, 6, 7, 10 to 13, 15 and 16 Ex-parte)
(By Sri. A.V.Y., Advocate for D14)
(D5, 8 and 9 dead)

Parties to IA No.II & III

1) Shri. Shivappa S/o Mudakappa Yadawad
and others,

.....Applicants/Plaintiffs

(By Sri. K.S.R., Advocate)

-Vs.-

1) Smt. Mallavva W/o Basappa Yadawad
and others,

.....Opponents/Defendants

(D1 and 2 -in person)
(D3, 4, 6, 7, 10 to 13, 15 and 16 Ex-parte)
(By Sri. A.V.Y., Advocate for D14)
(D5, 8 and 9 dead)

ORDER ON IA No.II & III

IA No.2 is filed by the plaintiffs under Order I Rule 10(2) R/w Sec.151 of CPC seeking to struck out defendant No.5, 8 and 9 from the array of parties on the ground that they had expired even prior to the institution of the suit.

IA No.3 is filed under Order 1 Rule 10(2) R/w 151 of CPC seeking permission to implead proposed defendant Nos.17 to 19 as legal representatives of deceased defendant Nos.5, 8 and 9 respectively.

3. In the accompanying affidavit in support of the applications, it is stated that at the time of filing of the suit, the defendant Nos.5, 8 and 9 had already expired. However, by oversight, there names were included in

the plaint. After issuance of summons, it came to be notice of the plaintiffs as well as bailiff that the said defendants had predeceased the filing of the suit. It is further stated that defendant No.5 died leaving behind three sons and one daughter. The three sons already on record as defendant Nos.6, 7 and 8 (now deceased), and daughter is require to be impleaded as defendant No.17. Similarly defendant No.8 died leaving behind his legal heir, who is proposed defendant No.18. Defendant No.9 died leaving behind four sons, already on record as defendant Nos.10 to 13 and also one daughter, who is sought to be impleaded proposed defendant No.19. Hence, prayed for allowing the applications.

4. Notice of the IA No.3 has been till served upon the proposed defendants, but they remained absent. Even the existing defendants have not filed any objections to the applications.

5. Heard.

6. Having heard, the learned counsel for plaintiffs and on perusal of the records, the following points would arise for my consideration are as under;

POINTS

1) Whether IA No.2 seeking deletion of deceased defendant Nos.5, 8 and 9 is sustainable ?

2) Whether IA No.3 seeking impleadment of proposed defendant Nos.17 to 19 as legal representatives of deceased defendant Nos.5, 8 and 9 is to be allowed?

3) What order?

7. My findings to the above points is as under;

Point No.1: In the affirmative

Point No.2: In the affirmative

Point No.3: As per the final order for the following;

REASONS

8. **Point No.1:-** At the outset, I have perused the applications, affidavits and case records. It is clear that the defendant Nos.5, 8 and 9 were not alive on the date of institution of the suit. Therefore their presence on record is a formal defect which requires correction. Further, the proposed defendant Nos.17 to 19 are necessary and proper parties being legal representatives of the deceased defendants, for effective adjudication of the dispute.

9. Since the defendant Nos.5, 8 and 9 were already dead on the date of filing of the suit, the suit against them is not maintainable. Hence, their names are liable to be struck out from the array of the parties. Hence IA No.2 deserves to be allowed. Accordingly, point No.1 is answered in the affirmative.

10. **Point No.2:-** The proposed defendants Nos.17 to 19 are legal heirs of the deceased defendant Nos.5, 8 and 9 respectively and are necessary for complete and effective adjudication. No objections are raised against their impleadment. Hence IA No.3 also deserves to be allowed. Accordingly, point No.2 is answered in the affirmative.

11. **Point No.3:-** In view of the above findings and discussion made on the point No.1 and 2, this court deems it fit to pass the following;

ORDER

IA No.1 is hereby allowed.

The names of the deceased defendant Nos.5, 8 and 9 are struck out from the array of the parties.

IA No.3 is hereby allowed.

The plaintiffs is permitted to implead proposed defendant Nos.17 to 19 as parties to the suit as prayed.

Plaintiff shall carry out necessary amendment in the cause title within 14 days from date of this order.

(Dictated to the stenographer, transcribed and Computerized by him and then corrected, revised and signed by me and pronounced in the open Court on this 9th Day of September 2025)

(Ravi Babu Chawan)
Senior Civil Judge, Bailhongal.

