

IN THE COURT OF THE II ADDITIONAL SENIOR CIVIL JUDGE, GOKAK

Present: Sri. K.M. SHANKAR, B.A.L., LL.B.
I Addl. Senior Civil Judge, Gokak
C/C II Addl. Senior Civil Judge, Gokak

Dated, this the 20th day of December, 2023

O.S.No.702/2022 (Old No.107/2018)

(O.S.No.702/2022 C/W OS.No.405/2017)

Plaintiffs in OS.No.702/22:

1. Rajashri Shivappa Mayannavar,
Age: 11 years, Occ: Student,
R/o: Arabhavi village, Gokak taluk.
2. Lakkawwa Shivappa Mayannavar,
Age: 40 years, Occ: Agriculture,
R/o: Arabhavi village, Gokak taluk.

(Since 1st plaintiff is minor R/by her mother
2nd plaintiff).

(By Sri.MRB., Advocate)

V/s

Defendant in OS.No.702/22:

Yallawwa Nagappa Mayannavar,
Age: 30 years, Occ: Agriculture,
R/o: Waddar Galli, Gokak, Gokak taluk.

(D1 R/by Sri. SST., Adv.,)
(PD2 R/by Sri.CVC., Adv.,)

Plaintiff in OS.No.405/17:

Sanvakka Satteppa Tahasildar,
Age: 40 years, Occ: Agri & Household,
R/o: Uppar Galli, Gokak, Gokak taluk,
Belagavi district.

(By Sri.CVC., Advocate)

V/s

Defendants in
OS.No.405/17:

1. Durgavva Bhimappa Gorobal,
Age: 58 years, Occ: Agriculture,
R/o: Waddar Oni, Gokak, Gokak taluk.
2. Fakiravva Nagappa Mayannavar,
now she is calling herself as Fatima
Nizam Gudwale,
Since deceased by her LRs.
- 2a. Ramzan Nijamsab @ Nizam Gudawale,
Age: 47 years, Occ: Business,
R/o: Raviwar Peth, Limbkai Oni, Gokak,
Gokak taluk, Belagavi district.
- 2b. Malikjan Nijamsab @ Nizam Gudawale,
Age: 44 years, Occ: Business,
R/o: Raviwar Peth, Limbkai Oni, Gokak,
Gokak taluk, Belagavi district.
- 2c. Ganisab Nijamsab @ Nizam Gudawale,
Age: 43 years, Occ: Business,
R/o: Raviwar Peth, Limbkai Oni, Gokak,
Gokak taluk, Belagavi district.
3. Honnavva Siddappa Bagewadi,
Age: 55 years, Occ: Agriculture,
R/o: Hanuman Nagar, Naganur village,
Gokak taluk.
4. Uddavva Nagappa Panditnavar,
Age: 53 years, Occ: Agriculture,
R/o: Sangankeri village, Gokak taluk.
5. Yallavva Nagappa Mayannavar,
Age: 22 years, Occ: Agriculture,
R/o: Waddar Oni, Gokak,
Gokak taluk.
6. Renuka Yallappa Hanamsagar,
Age: 28 years, Occ: Agriculture,
R/o: Waddar Oni, Gokak,
Gokak taluk.

7. Lakkavvaa Shivappa @ Shivarayi Mayannavar,
Age: 35 years, Occ: Agriculture,
R/o: Near Chippalakatti Totha,
Sangankeri village, Gokak taluk.
8. Rajeshri Shivappa @ Shivanappa Mayannavar,
Age: 10 years, Occ: Student,
R/o: Near Chippalakatti Totha,
Sangankeri village, Gokak taluk.

(She is a minor R/by her mother 7th defendant)

9. Vittal Basappa Kappalguddi,
Age: 45 years, occ: Agriculture,
R/o: Waddar Oni, Gokak, Gokak tlauk.
10. Rukma Basappa Kappalaguddi,
Age: 37 years, Occ: Agriculture,
R/o: Waddar Oni, Gokak, Gokak taluk.

((D1 to 3, 6, 9 & 10 R/by Sri.DBB., Adv.,)
(D2(a) to (c) R/by Sri.DSB., Adv.,)
(D7 & 8 R/by Sri.MRB., Adv.,)
(D4 and 5 exparte)

I.A. No.3

Applicant : Sanvakka
V/s
Opponent : Yallawwa

ORDERS ON IA.NO.3 DATED 30.07.2018 FILED UNDER ORDER 1 RULE
10 R/W/S 151 OF CPC

The proposed 2nd defendant has made the instant application seeking her impleadment in the OS.No.702/2022 on

the grounds that the suit is filed for the relief of partition in respect of the suit properties. But, the suit property Sy.No.163/4 of Gokak and Sy.No.15/12 of Arabhavi village are ancestral joint family properties, wherein the proposed 2nd defendant has right, title and interest. Therefore, she has filed one more suit OS.No.405/2017 before the II Additional Senior Civil Judge, Gokak for the relief of partition against the plaintiff and defendants herein and it is pending consideration. But, without disclosing this fact the plaintiff and defendant by colluding with each other have filed OS.No.702/2022 behind the back of the proposed 2nd defendant. If the application is allowed, no loss or hardship would be caused to the other side. On the contrary, if it is not allowed, the proposed 2nd defendant will be put to heavy and irreparable loss.

2. In the objections dated 30.09.2022, the application is resisted by the plaintiffs of OS.No.702/2022 contending that the averments made therein are false. The written statement filed in OS.No.405/2017 may be treated as part and parcel of this objections. The proposed 2nd defendant is claiming falsely as a legal heir and filed this application for impleading her without any kind of document to substantiate her status with Shivappa.

She has to prove that Gangavva was given in marriage to Balappa Tahasildar and out of their wedlock a son by name Satteppa born and the proposed defendant is the wife of Satteppa. Moreover, she is not the class-I legal heir of Shivappa or anybody as shown by her in the description of the alleged genealogy shown in OS.No.405/2017. Under these circumstances, the proposed defendant is neither necessary nor proper party to the suit. In her absence it may be decided effectively. The essential ingredients of Order 1 Rule 10 of CPC, are not made out by the proposed defendant and it is not stated that how she is necessary and proper party to the suit. Accordingly, it is prayed for dismissal of the application with cost.

3. I have heard the arguments of the learned counsel appearing for the parties and perused the material on record.

4. Points that arise for consideration of the court are;

1. Whether application deserves to be allowed?
2. What Order?

5. Findings of the court on the above points are as under:

Point No.1: in affirmative and

Point No.2: as per the final order for the following:

R E A S O N S

6. Point No.1; as noted above, plaintiffs of OS.No.702/2022 have resisted the application on the ground that the proposed 2nd defendant is claiming falsely as a legal heir without producing document to show her status with Shivappa and she is the wife of Satteppa. She is not the class-I legal heir of Shivappa. But, certificate of genealogy issued by the office of the Tahasildar produced by the proposed 2nd defendant reveals that she is the wife of Satteppa Tahasildar, who is the son of Balappa and his wife Gangavva, who is the sister of Shivappa and there is no contra material to disbelieve this document at this stage. That apart, she filed OS.No.405/2017 claiming that the suit properties of old OS.No.107/2018 (New OS.No.702/2022) are ancestral joint family properties of herself and others. Therefore, her presence is very much required in OS.No.702/2022 to adjudicate the matter effectively and completely and accordingly she is the necessary party to the said suit and the objections of the plaintiffs of the

said case do not hold water and cannot be accepted and the point No.1 is answered in the affirmative.

7. Point No.2: in view of the findings arrived on the point No.1, I proceed to pass the following:

O R D E R

The IA-3 filed Under Order 1 Rule 10

R/W/S 151 of CPC, is hereby allowed.

There shall be no order as to cost.

(Dictated to the stenographer on computer, typed by him, revised, corrected and then pronounced by me in the open Court on this the 20th day of December, 2023)

Sd/-
(K.M.SHANKAR)
C/C II Addl. Senior Civil Judge, Gokak