

IN THE COURT OF CIVIL JUDGE & JMFC, HUKKERI**O.S.No. 228/2017****Dated this 8th day of December 2020**

PRESENT; SMT. BHAGYAMMA
B.COM. LLB.,
CIVIL JUDGE & JMFC, HUKKERI.

Plaintiffs :- Ku. Akash Mallappa Ankalagi and others

V/s

Defendants:- Smt. Kallavva w/o Adivappa Ankalagi
and others

I.A.No.VI

Applicant :- Kum. Akash Mallappa Ankalagi and others
plaintiffs

V/S

Opponent :- Smt. Kallavva w/o Adivappa Ankalagi
defendants and others

Order on application filed under Order 1 Rule- 10 of CPC

The counsel for the plaintiffs have filed this IA under order 1 Rule 10 r/w Section 151 of CPC to implead the proposed defendants No.12 and 13 as parties by allowing this application in the interest of justice.

2. In the sworn affidavit, the plaintiff No.2 stated on behalf of plaintiff No.1 as guardian since the plaintiff No.1 is minor. She knows the defendants and they have

filed suit for partition and separate possession against them. During the pendency of suit the proposed defendant No.12 created mutation in respect of RS No.502 illegally and he intended to sell the said property illegally in favour of proposed defendant No.13. As such the proposed defendants no.12 and 13 are necessary parties in this suit and prayed to allow the application. If the application is not allowed they will be put to untold hardship and inconvenience. On the other hand no hardship would be caused to the proposed defendants No.12 and 13.

3. Per contra, the counsel for proposed defendants No.12 and 13 filed detailed objection by denying the contents of objection and affidavit. The application are not at all maintainable either in law or on facts. The plaintiffs came up with this application by suppressing real facts. They have not stated whether the proposed defendants No.12 and 13 are necessary and formal parties to the suit. Further, contended that the landed property to an extent of 01Ac-23Gs of RS No.507 situated at Karaguppi village originally belongs to the family of Payannavar. The plaintiffs have no relation with proposed defendants No.12 and 13 and they are unknown person to them. Originally the aforesaid property is belonged to the family of Parappa Payannavar. The proposed defendant No.12 Smt.Iravva

Mallappa Payannavar have got $\frac{1}{2}$ share in the property at RS No.507 and VPC No.54 and 121, she has been in possession of her $\frac{1}{2}$ share in the said properties. The plaintiffs are strangers to the family of Payannavar and they have no manner of right, title and interest in the said properties. It is further contended that the suit in OS No.376/1989 were adjudicated before this court in between proposed defendant No.12 Iravva Mallappa Payannaavar and Virupaxi Basavanteppa Hattaragi @ Uppin and Adivappa Anakalagi, Siddappa Anakalagi before Civil Judge, Hukkeri. Similarly, the suit OS No.401/1989 filed against Adivappa Anakalagi, Siddappa Anakalagi, Siddappa Anakalgi and proposed defendant No.12 Iravva Mallappa Payannavar. After passing judgment and decree, RA No.12/1988 and 13/1998 were adjudicated before Senior Civil Judge, Hukkeri.

4. Thereafter, RSA No.42/2005 and RSA No.43/2005 were adjudicated before Hon'ble High Court of Karanataka, Dharawad Bench and disposed on 04-04-2018. Wherein $\frac{1}{2}$ share allotted to proposed defendant No.12 Iravva w/o Mallappa Payannavar in the properties at RS No.507, VPC No.54 and 121 situated at Karaguppi village and remaining $\frac{1}{2}$ share allotted to the legal heirs of Adivappa Anakalagi. The Hon'ble Court observed that Siddappa Basavanteppa Anakalagi has no manner of right in the said properties. Being aggrieved by the

orders of Hon'ble courts, Siddappa Basavanateppa Ankalagi has instigated the plaintiffs to file this IA, which is no maintainable. As per order of Hon'ble High Court of Karnataka, Dharwad bench, the proposed defendant No.12 mutated her name and she has been in separate possession of her $\frac{1}{2}$ share. Even though the plaintiffs have no manner of rights in the said property, they came up with this false application. Even the plaintiffs are not coparcenors to claim partition in land at RS No. 507/2. Hence, they prayed to dismiss the IA with cost.

5. Heard both the sides and perused the documents which are available on record.

6. Now the point that would arise for consideration:
Whether the plaintiffs have made out ground to implead proposed defendants No.12 and 13 as parties in this suit?

7. My answer to the above point is in the negative for the following:

REASON

8. The plaintiff filed this suit for the relief of partition and separate possession against the defendants of their 2/15th share in the suit schedule properties. The suit schedule properties are at RS no.528, 507, 41/1 situated at Karaguppi village, RS No.28 situated at Banibagi village and VPC No.121, VPC No.54 are situated at Karaguppi village. The plaintiff contended that there is

no partition at all in the said properties. On the other hand the defendants No.1, 3 to 5 appeared through Sri. R.B.C advocate and denied the relationship of plaintiff with them. Either the plaintiff No.1 and 2 are not wife and children of the defendant No.3. They are strangers to their family. The plaintiffs submitted in this suit that the plaintiff No.1 is the wife and the plaintiff No.2 is the son of defendant No.3, whereas the defendant No.3 seriously denied their relationship with him. After giving evidence by plaintiff No.2, it was posted for cross-examination of PW-1. At this stage the plaintiffs came up with this IA by stating that the proposed defendant No.12 got mutate her name to the property at RS No.507 illegally during the pendency of the suit. She also tried to alienate the said property in favour of defendant No.13, as such the plaintiffs prayed to implead them as necessary parties. In inter alia the proposed defendants No.12 and 13 have categorically denied the application filed by the plaintiffs by stating that the proposed defendant No.12 has absolute right and title in her $\frac{1}{2}$ hissa of the property at RS No.507, VPC No.121 and 54 situated at Karaguppi village as per judgment and decree passed in previous litigations held in OS No.389/1989, 401/1989, RA No.12/1989, 13/1989 and RSA No.42/2005 and 43/2005.

9. Having gone through the materials available on record, the property is at RS No.507 situated at Karaguppi village, wherein the plaintiffs claimed their share by stating that they are son and wife to defendant No.3. It is the contention of proposed defendants No.12 and 13, the property at RS numbers belongs to the family of Payannavar and the plaintiffs have no manner of right to claim the share in the property. As per genealogy produced by the plaintiff along with the plaint their propositus are Adivappa and Kallavva. The counsel for proposed defendants No.12 and 13 have produced the documents such as RTC extract of RS No.507 which shows the land measuring 31Gs-08Anas is in the name of Iravva mallappa Payannavar in the document. The plaintiff further furnished the copy of order passed on IA No.I in OS No.153/2018 dated 15-10-2019, certified copy of judgment and decree passed by Hon'ble High Court of Karnataka, Dharwad Bench in RSA No.42/2005 and RSA No.43/2005 dated 04-04-2018. Wherein the plaintiff is entitled $\frac{1}{2}$ share in the suit schedule properties and remaining $\frac{1}{2}$ share retained jointly to defendant No.2 Kallavva w/o Adivappa Ankalagi, defendant No.3 Basavaraj and defendant No.4 Mallappa s/o Adivappa Ankalagi as referred in the suit at OS No.376/1989. Herein this suit, the plaintiffs claimed their share in the properties at RS No.507/2 by stating that they are son

and wife to defendant No.3 Mallappa Adivappa Ankalagi. Even though the defendant No.3 and others denied the relationship of plaintiffs with them, that has to be considered on the merits of the suit. The burden is upon the plaintiffs to prove their relationship with defendant No.3. But at this juncture it is unable to decide their relationship with the defendant No.3. The proposed defendants No.12 and 13 also denied the relationship of plaintiffs with the suit schedule property. More importantly, it is seen that the proposed defendants No.12 and 13 have not disputed that they tried to alienate one of the suit schedule property at RS No.507/2. At the same time it is relevant to note that the plaintiffs are not related to the family of proposed defendant No.12 Iravva Mallappa Payannavar. Apart from $\frac{1}{2}$ hissa in RS No.507 already allotted to her by the Hon'ble High Court of Karanataka, Dharawad Bench in RSA No.42/2005 and 43/2005. When that being the circumstances, the proposed defendant No.12 and 13 are not necessary or formal parties in his particular suit. In addition to that the proposed defendant No.12 already got mutated her name as per judgment and decree passed in RSA and the plaintiffs have no manner or right to claim any share in respect of $\frac{1}{2}$ hissa allotted to proposed defendant No.12. When the things stands thus so, the proposed defendants No.12 and 13 are not proper

parties to the suit as stated by plaintiffs. Apart from the proposed defendants No.12 has every right to alienate or transfer her share in anybodies favour being the lawful owner of ½ hissa in RS No.507, VPC No.121 and 24 situated at Karaguppi village. The plaintiffs have not made out sufficient ground to allow the IA No.VI. Hence the application is deserves to be dismissed. **Accordingly, the above point is answered in the Negative.**

10. In the result I proceed to pass the following:

ORDER

IA No.VI filed by the counsel for plaintiffs U/Order 1 Rule 10 r/w Sec.151 of CPC is hereby dismissed.

Under facts and circumstances of the case no order as to cost.

(Dictated to the stenographer, transcribed by her, corrected, signed and then pronounced by me in the open court this day of 08th day of December 2020)

**(SMT. BHAGYAMMA)
CIVIL JUDGE & JMFC.
Hukkeri.**

08-12-2020

ORDERS ON MEMO

The counsel for plaintiff filed memo by not pressing the IA No.V dated 23-01-2020 filed to implead proposed defendants No.6 and 7 and prayed to pass necessary orders.

On the other hand the counsel for proposed defendants No.12 and 13 filed objection by denying the contents of memo.

Earlier the plaintiffs filed IA No.VI by stating that the proposed defendants No.6 and 7 are necessary parties in this suit, but the defendants No.6 and 7 already made as parties. Anyhow the plaintiffs again filed this application to implead the proposed defendants No.6 and 7 which is not maintainable. More over, the plaintiffs have not given any sufficient reasons to dismiss the IA No.V and prayed to reject the memo.

Heard and perused.

The perusal of available materials, it is seen that the plaintiffs have filed this suit against the defendants No.1 to 11 seeking for the relief of partition and separate possession. After filing of written statement by some of the defendants the plaintiffs have led evidence.

In the meantime the counsel for plaintiffs filed IA No.V under Order 1 Rule 10 CPC to implead the proposed defendants No.6 and 7 during the stage of cross-examination of PW-1. After hearing the matter, the counsel for plaintiff came up with this memo to not press the IA No.V and filed another IA No.VI to implead proposed defendants No.12 and 13. Herein this suit the proposed defendants No.6 and 7 as mentioned in IA No.V are already parties in this suit. Anyhow the plaintiffs mentioned proposed defendants No.6 and 7 instead of proposed defendants No. 12 and 13. By considering the reasons assigned in the memo the same is deserves to be allowed in the interest of justice. In the result, I proceed to pass the following:

ORDER

The memo filed by the plaintiff is
hereby allowed.

Consequently, IA No.V is hereby
dismissed as not pressed.

**CIVIL JUDGE & JMFC
Hukkeri.**

09-07-2019

(Order pronounced in the open court, vide separate order)

ORDER

**CIVIL JUDGE & JMFC
Hukkeri.**