

The provision under which application is filed	:	IA No.II– U/Order I Rule 10 of C.P.C.
Relief Sought for	:	Impleading defts No. 2 to 5.
The date on which application is filed	:	28.11.2023
Number of application	:	IA No. II
The date on which objections are filed by opponents	:	--
The date on which Order is passed on the application	:	04.08.2026

**ORDERS ON IA No.II FILED UNDER ORDER 1 RULE 10
R/W SEC. 151 OF CPC.**

1. The Advocate for the plaintiff has filed this application under Order I Rule 10 of CPC to implead the proposed defendants No.2 to 5 in this case.

2. In the affidavit annexed to the application, the plaintiff, Kempanna Basappa Talawar, has stated that he has filed this suit seeking the relief of preferential right in respect of the suit property, and the proposed defendant Nos. 2 to 5 are the necessary parties to this case. Among them, the proposed defendant No. 2 is the daughter of the defendant No. 1, and proposed defendant Nos. 3 and 4 are the children of the proposed defendant No. 2 and the said suit property has been sold in favor of the defendant No. 5. Therefore, he states that

the proposed defendant Nos. 2 to 5 are the proper and necessary parties in this case, and he prays to implead the said proposed defendants.

3. The notice on I.A. No.II was served upon the proposed defendant Nos. 2 to 5. The defendant No. 5 has appeared through advocate Shri K.B.Kurabet. The proposed defendant No. 3 was said to be working in Bangalore. Even though the notice was served, he did not appear; therefore, the objections were taken as not filed. The notice on proposed defendant No. 4 was served, and he did not appear, and his objections are taken as nil. The notice on proposed defendant No. 3 was served through RPAD. Even then proposed defendant No.3 did not appear, and their objections are taken as nil.

4. Heard the learned Advocates appearing for the plaintiff. Perused the documents which have been filed before the court.

5. The point that arises for the consideration of this Court is ***Whether the proposed defendants No. 2 to 5 are proper and necessary parties in this case ?***

6. This court answers the above point in the **AFFIRMATIVE** for the following :

REASONS

7. The present suit has been filed by the plaintiff seeking his preferential rights over the suit property. It is said that plaintiff is the own brother of the defendant. And the suit properties are the agricultural lands bearing Survey Nos. 168/2 and 168/5 of Shirahatti B.K. Village, which are measuring 1 acre 1 guntas and 35 guntas, respectively.

8. It is the case of the plaintiff that as he is the own brother of the defendant No. 1 and the suit properties are the ancestral properties, inherited by their ancestors, and now the properties are standing in the names of the defendant No. 1 , if the defendant wants to sell the property, a preferential right has to be given to the plaintiff before selling it to third persons.

9. It is said that if the property is sold to a third person, it would put the plaintiff to loss, as his property is also situated adjacent to the suit property. And it would be difficult for carrying out the agricultural activities by the plaintiff in his

land. Therefore, he claims that the suit properties have to be sold only to the plaintiff.

10. Whereas the defendant has appeared through her advocate and has filed her written statement, denying the plaintiff's averments. And the defendant states that the suit is filed only with an intention to harass the present defendant.

11. The defendant No. 1 states that the family of the plaintiff is different, and the family of the defendant is different. It is contended that there has been a partition between the family of the plaintiff and the defendant from many years. Further the defendant submits that as there has been a division of the properties, she has been the absolute owner and she can sell the property to any other person as per her wish. And she denies that there has been an agreement during the time of the elders that the property has to be sold only to the plaintiff.

12. It is said that the plaintiff is not the Class-1 legal heir. And the said properties are very large pieces of land which belong to the defendant, measuring 1 acre 12 annas and 35 guntas, and there is no hindrance for the plaintiff to cultivate

his land independently, even if the properties are sold to some other persons.

13. In this case, during the pendency of the case, the defendant No. 1 has died, and her daughter is the proposed defendant No. 2. The proposed defendant Nos. 3 and 4 are the children of proposed defendant No. 2, and defendant No. 5 is the purchaser of the property from the hands of the proposed defendant Nos. 2, 3 and 4. Section 22 of the Hindu Succession Act gives a Class-I heir the preferential right to buy a co-heir's share before it is sold to an outsider. The right is a preference, not ownership. It lets one heir step in ahead of an outside buyer, at a price the heirs agree on or the court fixes, so the inherited property stays with the people who inherited it. The whole provision exists to keep intestate property from being broken up among strangers the moment one co-owner wants out.

14. It is the case of the plaintiff that now the property is sold in favor of the defendant No. 5 after the death of the defendant No.1 by the proposed defendant Nos. 2, 3, and 4. Therefore, he wants to implead the said defendants in this case.

15. Even before the disposal of the suit, the defendant No. 1 has died, and during the pendency of the suit, the proposed defendant Nos. 2, 3, and 4, after getting their names mutated to the suit properties, have sold the land in favor of defendant No. 5. Therefore, now the property is standing in the name of proposed defendant No. 5. Therefore, in order to completely adjudicate the suit, the proposed defendants are necessary and proper parties in this case. Without their presence, no effective decree can be passed. Therefore, the proposed defendant Nos. 2 to 5 are the necessary and proper parties for complete adjudication of this suit. Therefore for these reasons, I answer the above point in the affirmative and proceed to pass the following :

ORDER

The IA No. II filed by the plaintiff under Order I Rule 10 of CPC is hereby allowed.

The plaintiff is directed to implead the proposed defendants No.2 to 5 in this case and carryout the amendment and file the amended plaint by :

O.S.No.255/2023

**(ADITYA R. KALAL)
Civil Judge & JMFC,
Hukkeri.**

(Order pronounced in open court,
vide separate order)

ORDER

Civil Judge & JMFC

Hukkeri