

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,
AT BANAHATTI.

DATED THIS THE 28th DAY OF MARCH 2023.

Present: Sri.Kirankumar. D.Wadigeri, *B.A.L, L.L.B.*,
Senior Civil Judge & JMFC
Banahatti.

O.S.No.19/2018.

Plaintiffs:

1. Shivanand S/o: Siddappa Itagoni,
Age: 20 years, Occ: Agriculture,
2. Allappa S/o: Bhirappa Itagoni,
Age: 48 years, Occ: Agriculture,
3. Prabhu S/o: Bhirappa Itagoni,
Age: 45 years, Occ: Agriculture,
4. Raju S/o: Bhirappa Itagoni,
Age: 38 years, Occ: Agriculture,

All are R/o: Hanagandi, Tq: Rabkavi-
Banhatti, Dist: Bagalkot.

(By pleader **Sri.D.M.J.**)

-Versus -

Defendants:

1. Malappa S/o: Shivarayappa Itagoni,
Age: 45 years, Occ: Agriculture,

R/o: Hanagandi, Tq: Rabkavi-Banhatti,
Dist: Bagalkot.

2. Nagappa S/o: Shivarayappa Itagoni,
Age: 43 years, Occ: Agriculture,
R/o: Hanagandi, Tq: Rabkavi-Banhatti,
Dist: Bagalkot.
3. Vittal S/o: Shivarayappa Itagoni,
Age: 41 years, Occ: Agriculture,
R/o: Hanagandi, Tq: Rabkavi-Banhatti,
Dist: Bagalkot.
4. Prakash S/o: Maruti Itagoni,
Age: 28 years, Occ: Agriculture,
R/o: Hanagandi, Tq: Rabkavi-Banhatti,
Dist: Bagalkot.
5. Gopal S/o: Maruti Itagoni,
Age: 27 years, Occ: Agriculture,
R/o: Hanagandi, Tq: Rabkavi-Banhatti,
Dist: Bagalkot.
6. Ramesh S/o: Maruti Itagoni,
Age: 23 years, Occ: Agriculture,
R/o: Hanagandi, Tq: Rabkavi-Banhatti,
Dist: Bagalkot.
7. Smt. Gourawwa W/o: Shivanand Belliwar,
Age: 26 years, Occ: Agriculture,
R/o: Kaluti Nagar, Hanagandi,
Tq: Rabkavi-Banhatti, Dist: Bagalkot.
8. Smt. Jyoti W/o: Manjunath Belliwar,
Age: 25 years, Occ: Agriculture,
R/o: Hanagandi, Tq: Rabkavi-Banhatti,
Dist: Bagalkot.
9. Somaling S/o: Fakirappa Itagoni,
Age: 55 years, Occ: Agriculture,

R/o: Hanagandi, Tq: Rabkavi-Banhatti,
Dist: Bagalkot.

(By pleader **Sri. C.R.S.** for D.1, D.2,
D.4 to D.6 and D.3, D.7 to D.9 placed
Ex-parte)

IA.No.VII

Applicant/Defendant No.1:

Malappa S/o: Shivarayappa Itagoni.

-versus-

Opponent/Defendant No.10:

Basavaraj S/o:Somalingappa Itagoni,
Age: 40 years, Occ: Agriculture,
R/o: Terdal, Tq: Rabkavi-Banhatti,
Dist: Bagalkot.

ORDER

1. The defendant No.1 has filed IA.No.VII under order 1 Rule 10 of CPC to implead the opponent as defendant No.10 in the suit.
2. The defendant No.1 in his affidavit filed along with this application has stated that, he has sworn the affidavit on his behalf and behalf of the defendant No.2 to 8. That the

proposed defendant owned a ancestral property in RS.No.86/2 measuring 02-A 28-Gs and RS.No.87/2 measuring 03-A 02-Gs but the plaintiff intentionally has not included those properties and he has not been impleaded as party to the suit. Further it is stated that, the plaintiff No.1 has also owned RS.No.66/3A measuring 34-Gs and the defendant No.9 is owned RS.No.66/3B measuring 34-Gs who are already parties to the proceedings but the proposed defendant No.10 is not the party in this case and he is proper and and necessary party to the proceedings and hence, it is prayed to implead the proposed defendant No.10 as a party to the suit.

- 3.** The plaintiffs in their objections have contended that, the proposed defendant No.10 is not at all proper and necessary party to determine the real controversy between the parties and only with an intention to drag on the proceedings the defendant No.1 has filed this false application. Already the necessary parties have been impleaded in the case and the proposed defendant is not having any right, title and interest and he has no way concern to the suit. Further the

properties belonging to the defendants are not included in the suit properties and the plaintiffs and defendants have not taken any contention in their pleadings about the interest of the proposed defendant. Hence, it is prayed to dismiss IA.No.VII.

4. Heard both sides on IA.No.VII.

5. Then the following points arise for consideration of this court are as under:-

1. Whether the proposed defendant No.10 is proper and necessary party to the suit?
2. What order?

6. The findings of this court on the above points are as under:

Point No.1 - In the Negative.

**Point No.2 - As per final order,
for the following:**

REASONS

7. Point No.1: The plaintiffs have filed the suit for partition and separate possession in the suit properties. In the pleadings of the plaintiffs it is nowhere stated about the proposed defendant as well as the properties which are mentioned in this

application alleged to be belonging to the proposed defendant No.10. The defendants have taken contention that, already there was a partition in between the family of the deceased Fakirappa, Lakkappa and Vittal during the lifetime of Fakirappa. Further it is contended that, the deceased Bheerappa and defendant No.9 together have relinquished their right, title and interest over the suit property in favour of father of the defendant No.1 to 6 by name Shivappa in the year 2004.

8. So, none of the parties to the suit who are already on record have pleaded anything about the proposed defendant No.10 and his properties are also the joint family properties. Moreover, it is for plaintiffs to implead the parties as per their wish and even the defendants could have taken contention previously in their pleadings about the defendant No.10 and his properties then it would have been a different thing. So at this stage without prior pleadings, the proposed defendant No.10 will not be considered as a proper and necessary party to the suit. Hence, my finding to **point No.1 is in the Negative.**

9. Point No.2: In view of the reasons and finding given to point No.1, the following is made-

ORDER

IA.No.VII filed under order 1 rule 10 of CPC by the defendant No.1 is hereby dismissed.

No order as to costs.

(Dictated to the Stenographer, transcribed and computerized by her, corrected and then pronounced by me in the open court on 28th day of March 2023)

(Kirankumar D.Wadigeri)
Senior Civil Judge & JMFC.,
Banahatti.