

ORDER ON I.A.NO.IV

1. The applicants by name Sri. Chandappa S/o. Nagappa Kambale, Sri. Kallappa S/o. Yamanappa Kambale & Sri. Sangappa S/o. Ramappa Kambale have filed IA.No.VI U/o. I Rule 10(2) R/w.Sec.151 of CPC, with a prayer to implead them as defendants No.30 to 32 in this suit.

2. In support of above application, the first applicant namely Chandappa S/o. Nagappa Kambale has sworn to an affidavit, wherein he mainly stated that, the plaintiffs have filed this suit for the relief of partition & separate possession in respect of suit properties land bearing R.S. No.81/2/3 measuring 2A-16G and land bearing R.S. No.219, measuring 7A-26G both situated at Madakhandi village, Jamakhandi taluka. The plaintiffs and defendants NO.1 to 29 are no way concerned to the suit schedule properties. Himself and his family members are in possession, cultivation and enjoyment of the suit schedule property land bearing R.S. No.219, measuring 1A-26G out of 7A-26G. He further stated that the applicant No.2 is in possession and enjoyment of 01A-16G towards northern

side in the said suit schedule property. Likewise the applicant No.3 is in possession and enjoyment of 01A-26G in the said suit schedule property which is adjacent to the land of applicant No.2. He further stated that himself and other two applicants have been in possession of the aforesaid extent of lands since long time. Such being the state of affairs, himself and other two applicants are necessary parties to the suit. With this the applicant No.1 has prayed to allow above application.

3. On the contrary, the plaintiff has filed objection to above application, wherein he has submitted that the applicants are strangers to the family of plaintiff and defendant No.1 to 29. The suit schedule properties are ancestral and joint family properties of plaintiff and defendant No.1 to 29. The applicants are nothing to do with the family of plaintiff and defendant No.1 to 29 and no way concerned to the suit schedule properties. As such they are not necessary parties to the suit. He further submitted that originally the suit schedule property land bearing R.S. No.219 measuring 7A-26G was granted to the father of defendant No.29 and one Dhoolappa S/o.Venkappa Kamble, who

died leaving behind the plaintiff and defendant No.1 to 29 as their legal heirs. Therefore, except the plaintiff and defendant No.1 to 29 no one has right over the suit schedule property. Therefore, the applicants are not necessary parties to the suit. With this the plaintiff has prayed for rejection of above application.

4. The defendant No.21 has also filed objection to above application, wherein he has admitted the possession of the applicants over the suit schedule property land bearing R.S. No.219, measuring 07A-26G. He further contended that the above said suit schedule property is belonging to him and his brother. Himself and other defendants have got share in the said suit schedule property along with another suit schedule property bearing R.S. No.81/2/3, measuring 2A-16G. He further submitted that the applicants have no right title and interest over the suit schedule property land bearing R.S. No.219. However he has submitted no objection implead the applicants as defendants in the present suit.

5. Heard both sides. Perused application, objections, pleadings and other materials

on record. Upon going through the same, the following points arise for consideration:

POINTS

1. Whether the proposed defendants are necessary or proper party to the suit ?
2. What order ?

6. Having heard the counsels and after going through the materials on record, this court answers to above points as under :

Point No.1 : In affirmative

Point No.2 : As per final for the following:

REASONS

7. **Point No.1** : The plaint reveals that, the plaintiffs have filed this suit for the relief of partition and separate possession claiming 1/3 rd share in the suit schedule properties.

8. In the above application the applicants have specifically contended that, the plaintiff & defendant No. 1 to 29 are no way concerned to the suit schedule property land bearing R.S.NO.219 measuring 7 acres 26 guntas. In fact they are in possession, enjoyment and cultivation of the above suit schedule

property since long time. They further stated that, the applicant No.1 is in possession of 1 acre 26 guntas, applicant No.2 is in possession of 1 acre 16 guntas & applicant No.3 is in possession of 1 acre 26 guntas of aforesaid suit schedule property. Such being the facts, the plaintiff & defendant No.1 to 29 have suppressed these materials facts and falsely filed the suit. They further stated that, in view of above facts & circumstances they are necessary parties to the suit.

9. On the contrary the plaintiff has submitted that, the suit schedule properties are ancestral and joint family properties of himself and defendant No.1 to 29. The suit schedule property land bearing R.S.No.219 measuring 7 acres 26 guntas was granted to the father of defendant No.29 and one Dhoolappa S/o Venkappa Kamble. As such himself and defendant No.1 to 29 are only concerned to the suit schedule properties involved in this case. He further submitted that, the applicants are nothing to do with the family of defendant No.1 to 29 & himself. They are totally strangers to their family. As such they are not necessary parties to

the suit.

10. It is important to note here that, the defendant No.21 has admitted the applicants' possession over the suit schedule property land bearing R.S.No.219 and also submitted that, he has no objection to allow them to come on record. He further submitted that, though they are in possession of the suit schedule property, but they have no any right, title & interest thereon.

11. It is to note here that, the applicants have produced the affidavits of the persons whose names appearing in the RTC of the said suit schedule property. They have stated in their affidavit that, themselves, the plaintiff & defendants No.1 to 29 are not in possession of the above said suit schedule property. In fact, the applicants are in possession of the suit schedule property by virtue of oral partition.

12. As per RTC of the suit schedule property the suit schedule proeprty land bearing Sy.No. 219 measuring 7 acres 26 guntas is jointly standing in the name of several persons. However the defendant No.21 herein has unequivocally admitted

in his objection that, applicants are in possession of the suit schedule property. Having regard to the above facts & circumstances, this court is of opinion that, it is just & proper to provide an opportunity to the applicants to come on record to establish their right. In view of above discussions, point No.1 is answered in the partly affirmative.

13. **Point No.2** : In view of above findings, the following order is passed :

ORDER

I.A.No.VI filed U/o 1 Rule 10(2) R/w sec. 151 of CPC by the applicants is hereby allowed.

For amendment of plaint and production of amended plaint.

Call on : 11.07.2023

Sd/-

***Addl. Senior Civil Judge,
Jamkhandi.***