

KABK700003372020



O.S./88/2020

**IN THE COURT OF ADDL SENIOR CIVIL JUDGE, JAMKHANDI.**

**Present:**

**Shri.Rajashekhar.S. Harsoor  
B.A. LL.B.,**

**Addl Senior Civil Judge, Jamkhandi.**

**O.S No.88/2020**

**Dated this, the 26<sup>th</sup> day of July, 2024.**

1. Smt. Bourawwa W/o Channayya Math @ Ganachari,  
Age : 75 years, Occ : House hold work & Agriculture,
2. Smt. Sushila W/ Basavaraj Gourimath,  
Age : 56 years, Occ : House hold work & Agriculture,  
Both are R/o: Gothe, Tq: Jamkhandi, Dist: Bagalkot.

**... Plaintiffs**

**(Represented by Sri.A.P.K., Advocate)**

**- Vs -**

1. Smt. Mahadevi W/o Sidarayya Hiremath,  
Age : 65 years, Occ : House hold work & Agriculture,  
R/o : LIG – 61 KHB Colony, 4<sup>th</sup> Stage,  
Near RMP Colony, Kuvempu Nagar,  
Mysore.

2. Smt. Shobha W/o Sangayya Hiremath,  
Age : 50 years, Occ : House hold & Agriculture,  
R/o : Daneshwari Nilay, Tiwari Chaal,  
Line Bazar, Dharawad.
3. Smt. Neelabai W/o Vidyadhar Mamadapur,  
Age : 45 years, Occ : House hold & Agriculture,  
R/o : Virakta Math complex, Devi Medicals & General  
Stores, Near Ambabhavani Temple, Jorapur Peth, Vijayapur.
4. Arun S/o Basavaraj Gourimath,  
Age : 33 years, Occ : Business & Agriculture,  
R/o : Gothe, Tq : Jamkhandi.

**... Defendants**

**(Deft. No.1 represented by Sri. K.P.K., Adv)**

**(Deft. No.2 represented by Sri. V.A.T./A.T.S./K.P.O., Advocates)**

**(Deft. No.3 represented by Sri. S.V.K., Adv)**

**(Deft. No.4 represented by Sri. P.P.N., Adv)**

**: PARTIES IN I.A No.XVI :**

1. Smt. Shobha W/o Sangayya Hiremath

**... Applicant/Defendant No.2 2**

**- Vs -**

1. Smt. Bourawwa W/o Channayya Math @ Ganachari  
and others

**...Opponents/plaintiffs**

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i.	Provision under which the application is filed	:	U/o.1 Rule 10 (2) R/w. Sec. 151 of CPC
ii.	Relief sought for	:	To implead the proposed party as defendant No.5 in this suit.
iii.	The date on which the application is filed	:	23.07.2024.
iv.	Number of the application	:	I.A.No.XVI
v.	The date on which the objection is filed by different opponents	:	Counsel for the plaintiffs orally objected on 23.07.2024.
vi.	The date on which the order was passed on the said application	:	26.07.2024.

**: ORDER ON I.A No.XVI:**

1. Defendant No.2 has filed IA.No.XVI U/o.I Rule 10(2) R/w Sec.151 of CPC with a prayer to implead the proposed defendant by name Shri. Kiran S/o. Basavaraj Gourimath as defendant No.5 in the suit.
2. In support of above application, defendant No.2 has sworn to an affidavit, wherein she has reiterated the facts narrated in her written statement & counter claim. She has mainly stated that, defendant No.4 has withdrawn the amount from her father & mother's account and utilized the funds to purchase the plots No.30 & 73 both situated at Mahalbagayat village, Tq : Vijayapur. Therefore she has claimed her right over said properties in her counter claim. She further stated

that, earlier she had filed similar application i.e., IA.No.VIII U/o. I Rule 10(2) R/w.Sec.151 of CPC to implead aforesaid proposed party as defendant in the suit. Now the plaintiffs have filed rejoinder to her counter claim. Under the changed circumstances, the proposed defendant is necessary party to the suit and his participation in the suit is very much necessary for proper adjudication of the matter in dispute. With this, defendant No.2 prayed to allow above application.

3. On the contrary, counsel for the plaintiffs has orally objected on 23.07.2024 stating that, defendant No.2 had filed similar application (IA.No.VIII U/o.I Rule 10(2) R/w.Sec.151 of CPC) in this suit and same was rejected by this court. Being aggrieved by an order passed on aforesaid application, said defendant preferred Writ Petition No.103886/2022 (GM-CPC), before the High Court of Karnataka Dharwad Bench, wherein the order of this court was confirmed and dismissed the Writ Petition. Under such circumstances, IA.No.XVI is not maintainable. He further urged that, defendant No.2 filed this application only with intent to procrastinate the matter. With this,

counsel for the plaintiffs prayed for dismissal above application with heavy costs.

4. Heard both side. Perused the application, oral objection, pleadings & all other materials placed on record. Upon going through the same, the following points arise for consideration:

**POINTS**

1. Whether defendant No.2 has made out grounds to implead the proposed defendant as defendant No.5 in the suit ?
  2. What order ?
5. Having heard arguments canvassed by both the counsels and after going through the materials on record, this court answers to above points as under:

Point No.1 : In the negative.

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

**: REASONS :**

6. **Point No.1:** At the outset, it is to note here that, in MFA No.103673/2023 (CPC), the Hon'ble High Court of Karnataka,

Dharwad Bench has given direction to dispose off the matter within a period of one year.

7. Defendant No.2 has filed IA.No.XVI to implead the proposed defendant as defendant No.5 in the suit. She has mainly stated in the affidavit annexed to above application that, as defendant No.4 had withdrawn the amount from her parents account and purchased the plots No.30 & 73 in the name of proposed defendant, she included said plots in her counter claim, as such the proposed defendant is necessary party to the suit.
8. As per the materials on record, after completion of the pleadings, defendant No.2 had filed IA.No.VIII U/o.I Rule 10(2) R/w.Sec.151 of CPC to implead aforesaid proposed defendant as defendant in the present suit. This court had rejected said application vide considered order dated 03.08.2022. Thereafter said defendant had challenged aforesaid order before the Hon'ble High Court of Karnataka, Dharwad Bench in Writ Petition No.103886/2022 and said Writ Petition came to be dismissed on 29.08.2023. Again defendant No.2 has filed same application by assigning the same reasons on the guise of changed circumstances.

9. It is significant to note here that, the plots No.30 & 73 are not suit schedule properties in the plaint schedule. Moreover the plaintiffs are masters of their suit and they know better, who are necessary parties to the suit and to their claim. Therefore defendant No.2 has no right to implead the party, who is no way concerned to the suit schedule properties as shown in the plaint schedule.
  
10. It is well settled law that, the counter claim filed U/o.VIII Rule 6A of CPC is nothing but a plaint. In the counter claim filed by the defendant No.2, aforesaid plots have been shown as subject matter of the counter claim. As stated above, defendant No.2 has filed above application to implead the proposed defendant as defendant No.5 in the plaint not in her counter claim. Having regard to above facts & circumstances, this court is of opinion that, above application is not maintainable. It is to note here that, the Hon'ble High Court of Karnataka has held in Writ Petition No.103886/2022 at paragraphs No.5 & 6 that, *“Merely because, a contention is raised by way of counter claim that these properties are also held by Channayya, cannot be ground either to plead proposed defendant No.5 or include the properties purchased by proposed defendant*

*No.5. The scope of enquiry in partition suit cannot be expanded at the instance of contesting defendant No.2 i.e., petitioner herein. Therefore I do not find any illegality in the order under challenge. 6. The Writ Petition being divide of merits stands dismissed.”*

11. In view of above discussion and in the light of order of the Hon'ble High Court of Karnataka, Dharwad Bench stated supra, it is held that, defendant No.2 has not made out any grounds to allow above application. Accordingly, point No.1 is answered in the negative.
12. **Point No.2:** In view of above findings, the following order is passed:

**: O R D E R :**

I.A.No.XVI filed U/o.I Rule 10(2) R/w Sec.  
151 of CPC by defendant No.2 is hereby rejected  
with cost of Rs.500/-.

*(Dictated to the stenographer directly on computer, typed by her, transcript corrected and signed by me, and then pronounced in the open Court on 26<sup>th</sup> day of July, 2024)*

**Sd/-**  
**(Sri. Rajashekhar S. Harsoor)**  
**Addl. Senior Civil Judge,**  
**Jamkhandi**