

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

Present

Sri.A.SAMIULLA

B.Sc., LL.B.,

Addl. Sr. Civil Judge, Jamkhandi.

Dated: 12th Day of July 2021

OS.No.88 of 2020

Smt.Bourawwa w/o Channayya Math @ Ganachari,
& Another.

..... Plaintiffs

V/s

Smt.Mahadevi w/o Sidarayya Hiremath,
& Others.

..... Defendants

IA.No.IV

Smt.Bourawwa w/o Channayya Math @ Ganachari.

..... Applicant/P1

V/s

Sri.Arun Gourimath.

..... Opponent/D4

Order on IA-IV; u/O 1 Rule 10(2) r/w Sec.151 of CPC:

Plaintiff-1 moved this application seeking to delete the name of defendant-4 from the suit.

2. Defendant-4 filed memo to allow the application.

3. Defendant-2 resisted the application by filing objection statement. Defendant-3 adopts the objection of defendant-2.

4. Heard arguments from both side.

5. Following points arise for consideration:

1. *Whether plaintiff-1 has made out a case to struck out the name of defendant-4 from the suit?*

2. *What order?*

6. Findings to the above points are as under;

Point-1: Negative.

Point-2: As per below for the following;

REASONS

7. **Point-1:** At the outset; suit is filed for partition and separate possession of plaintiffs 1/5th share each in the suit properties by asserting that; the propositus Channayya died on 29.07.20 leaving behind wife Bourawwa (P1) and daughters Mahadevi (D1), Sushila (P2), Shobha (D2) and Neelabai (D3). They constituted joint family, they are in joint possession and there is

no severance of joint family status. Suit properties are ancestral joint family properties of propositus, as such they got 1/5th share each. Defendant-4 is son of plaintiff-2. Suit properties are in the name of propositus except the land bearing RS.No.447/2/1 (9As 29Gs) of Gothe village, which is in the name of plaintiff-1, as it is purchased by the propositus in her name. Propositus was running provisional shop in VPC.No.192 of Gothe village, the defendant-4 behind the back of plaintiffs and other defendants got the license of provisional shop in his name, as such he is arrayed as a party to the suit. Said shop belongs to the plaintiffs and defendants-1 to 3. They demanded partition but to no use, hence suit is filed.

8. Defendant-2 resisted the suit by filing written statement seeking counter claim. Defendant-3 adopts the written statement of defendant-2. They admits the

genealogy shown in the plaint and also the nature of suit properties. But contended that the family is having other properties, which are not included in the suit. They contended that; though in the presence of plaintiff-2 her son defendant-4 is not a necessary party to the proceedings but he being the anchor of fraud played in the joint family his presence is also necessary in the suit. After filing of suit they came to know about the license of provision shop obtained by the defendant-4 behind the back of plaintiffs & other defendants, as such his (D4) presence is necessary for effective adjudication. Denying other averments they contended that; the husband of plaintiff-2 being addicted to bad vices had suffered huge loss in business, due to this the defendants-2 & 3 advised their father to allow the family of plaintiff-2 to reside in the parental home, as such they are in parental home from the past 22 years. After the death of propositus;

the plaintiff-2 and her son (D4) colluding together and without disclosing the particulars of family properties, income of provision shop, agricultural income and fixed deposit of Rs.One Crore, they hurriedly got prepared partition deed (Apsath Watni) to defraud the legitimate share of defendants-1 to 3. Apart from this they also obtained signatures of defendants-2 & 3 on blank stamp paper of Rs.200/-. Notice was issued calling upon them to disclose the purpose for which signatures were obtained on blank stamp paper. Till this day they have not replied the notice. Propositus used to keep cash amount of Rs.50 lakhs in the house. Plaintiff-2 and defendant-4 have taken said amount. Among these grounds they prayed to dismiss the suit.

9. Plaintiff-1 filed the application at hand for the relief stated supra by stating that the defendant-4, who is the son of plaintiff-2 is her grand son. At para-

7 of plaint it is pleaded that the defendant-4 is made as party in this case as he got Kirana shop license in the VPC.No.192, which was originally in the name of deceased Channayya and he was running the Kirana shop. After filing of suit she came to know that the license which was in the name of deceased Channayya and the business run by him was closed in the year 2005-06 and defendant-4 obtained separate license & he is running Kirana shop in VPC.No.192 of Gothe village from 2016-17 on monthly rent of Rs.1,000/-. Defendant-2 in her written statement contended that; defendant-4 is not a necessary party, as he is a Class-II heir being son of plaintiff-2. Among these grounds the plaintiff-1 prayed to struck out the name of defendant-4.

10. Defendant-2 objected the application by contending that; presence of defendant-4 is necessary

for the complete and effective adjudication of real controversy between the parties to lis because in the plaint itself the plaintiffs have clearly stated that the defendant-4 without the consent of plaintiffs and other defendants have obtained license of Kirana shop, which was in the name of deceased Channayya and said shop is not exclusively belongs to the defendant-4. But in objection statement filed by the plaintiffs to the application filed by the defendant for appointment of receiver they contended that the deceased Channayya closed Kirana shop in the year 2005 by submitting a declaration. Defendant-4 obtained separate license and he is running Kirana shop in VPC.No.192 on rental basis. She contended that; it is true in her written statement it is stated that the defendant-4 is not a necessary party but at the same time it is contended that his presence is very much necessary for the complete adjudication of real

controversy, as he is the author of fraud in the joint family. Now to cover up the same present application is filed to delete him from the suit. Hence, she prayed to reject the application.

11. It is worth to note that; a necessary party is one, in whose absence the Court cannot pass an effective decree at all. Proper party is one, whose presence before the Court is necessary to ensure that all matters in dispute are effectually or completely determined. The only reason which makes it necessary to make a person party to action is that he should be bound by the ensuing result and the question should be settled in the suit.

12. In the light of settled principles let us analyze the factual matrix at hand to ascertain whether the presence of defendant-4 is warranted or not.

13. In plaint it is pleaded that deceased propositus

was running a provision shop but defendant-4 without the knowledge of plaintiffs and other defendants got shop license in his name but it is not exclusively belongs to him.

14. Defendant-2 in written statement at para-6 contended that; after filing of suit by the plaintiffs she came to know about the license of provision shop obtained by defendant-4 without consent of plaintiffs and other defendants.

15. In the present application plaintiff-1 stated that; after filing of suit she came to know that the deceased propositus closed business in the year 2005 and the defendant-4 started business in the year 2015-16 by taking the property bearing VPC.No.192 for rent from the deceased propositus & it is his exclusive business.

16. Plaintiffs relied on the documents viz., Xerox copy of rent agreement dated 16.11.16 executed by

deceased Channayya in favour of defendant-4 in respect of property bearing VPC.No.192 to run provision shop for a period of ten years for monthly rent of Rs.1,000/-. Web-site copy of dealer search of Commercial Tax Department, wherein it is indicated that the trade registered in the name of CM Math and MS Hiremath situated at 192, Main road, Gothe, Tq; Jamkhandi is de-registered on 1.4.05. Tax registration certificate dated 20.12.16, wherein it is certified that Sri.Arun (D4), Proprietor; Sri.Daneshawari Kirana Stores situated at 192 Gothe Savalgi has been registered as a dealer. Letter issued by the Thasildar, Jamkhandi stating that Kerosene license No.43/86/6 issued in favour of CM Math and MS Hiremath was canceled. Food Registration issued by Food Safety Officer, Jamkhandi in the name of defendant-4, which is registered on 09.01.14, wherein location of Food business is shown as AB Gourimath Kirana shop,

Gothe and kind of business is indicated as sales of sugar, Rice, Pulses, Oil & other Kirana food for sale.

17. On the other hand defendant-2 relied on the documents i.e., page of dairy containing the amount in due to the provision shop. This document does not bear seal and signature. The Karnataka Essential Commodities (Public Distribution System) Control Order, 1992 (Form-B), wherein CM Math and MS Hiremath were authorized to run fair price depot at property No.596B, Gothe, Tq; Jamkhandi issued by Deputy Commissioner, Vijayapur. This document relates to fair price depot at property bearing No.596B for distribution of Essential Commodities at Gothe village. The disputed business is a Provision shop. Show cause notice dated 4.5.13 issued by the Deputy Commissioner, Bagalkot to CM Math & MS Hiremath for non renewal of license obtained to sell kerosene.

Application filed for renewal of license to sell kerosene. Copy of license dated 20.4.1987 issued by Food Department in the names of CM Math & SM Hiremath to sell kerosene in VPC.No.596B. These documents are also not related to provision shop. Copy of ration card dated 15.10.09, wherein Chanayya, Bowravva, Basavarj, Sushila (P2) and Arun (D4) are shown as family members.

18. It is worth to note that the defendant-2 herein filed application for appointment of receiver to manage the transactions of Kirana shop. Said application is rejected by holding that at the moment on comparison of rival documents the defendant-2 fails to demonstrate a prima facie case, which leads for the appointment of a receiver as sought. It is also held that; a full-fledged trial is warranted to unfold the truth regarding disputed Provision shop business

whether it is a family business or exclusive business of defendant-4. If it is a family business then the defendant-2 can seek mense profits and recover the same from the defendant-4. In counter claim the defendant-2 stated that the approximate annual income of Provision shop is Rs.3,50,000/-. By demonstrating that also she can claim mense profits. Thus, in the light of factual situation at hand one can say that though the defendant-4 is not a necessary party to the suit but he is a proper party whose presence before the Court is necessary to ensure that all the matters in dispute are effectually or completely determined because the disputed business is in his name and he is running the same. This Court is of the opinion that instead of recording any finding against defendant-4 in this suit in his absence it is better to have his presence to avoid future complications and multiplicity of proceedings and also to meet the

principles of natural justice. Hence, above point is answered in negative.

19. Point-2: By virtue of above findings Court proceeds to pass the following;

ORDER

IA.No.IV; under Order 1 Rule 10(2) r/w Section 151 CPC filed by the plaintiff-1 is rejected.

No order as costs.

(Dictated to the Stenographer and directly typed by her, corrected and initialed by me and then pronounced in the open Court on 12th day of July 2021).

Sd/-

(A.SAMIULLA)
Addl. Senior Civil Judge
Jamkhandi.

/skn/