

KABK700003372020



O.S./88/2020

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

PRESENT: SMT KAVITA S. UNDODI, B.A., LL.B.,
Addl. Senior Civil Judge, Jamkhandi.

DATED: This the 3rd day of August 2022.

ORIGINAL SUIT NO.88/2020

PLAINTIFFS:

- 1) Smt. Bourawwa W/o Channayya Math @ Ganachari,
- 2) Smt. Sushila W/o Basavaraj Gourimath
& two others, R/o Gothe.

V/s.

DEFENDANTS:

- 1) Smt.Mahadevi W/o Sidramayya Hiremath
R/o: Mysore.
- 2) Smt.Shobha W/o Sangayya Hiremath
R/o: Dharwad.
- 3) Smt.Neelabai W/o Vidhyadhar Mamadapur
R/o Vijayapur.
- 4) Sri.Arun S/o Basavaraj Gourimath
R/o Gothe.

:: PARTIES IN I.A.NO.8 ::

APPLICANTS/DEFENDANTS:

- 1) Smt.Mahadevi W/o Sidramayya Hiremath
R/o Mysore & others.

V/s.

OPPONENTS/PLAINTIFFS:

- 1) Smt. Bourawwa W/o Channayya Math @
Ganachari, R/o Gothe
& Another one.

ORDERS ON I.A.No.8

The defendant No.2 has filed this application under Order 1 Rule 10(2) R/w Sec.151 of C.P.C to implead opponent as defendant No.5 in this suit.

2. The defendant No.2 sworn to an affidavit stating that she know the facts and circumstances of the case. The plaintiff No.1 is her mother, the plaintiff No.2 and defendant No.1 and 3 are her sisters. Her parents had four daughters and no male issues. Her father died on 29-07-2020 at Gothe village due to ill-health. During the lifetime of her father performed marriage of all four daughters. The plaintiff No.2 given in marriage to Gourimath family of Hole-Aluru village and except plaintiff No.1 all three daughters are residing in their husbands house. The plaintiff No.2, her husband and children are residing in the house of her parents. The defendant No.4 is looking after landed property and shops. Her mother is illiterate she is not having knowledge of family affairs. After death of her father, on 11-08-2020 plaintiff and defendant No.1 to 3 have got partitioned the properties

under memorandum of family arrangement. Her mother is having account No.2259 at Primary Agricultural Co-Operative Credit Society Ltd., Gothe and on verifying the same, it came to her knowledge that the defendant No.4 has withdrawn Rs.11,19,000/- on 15-07-2020 by using thumb impression of her mother and now there is balance of Rs.914/-. The defendant No.4 has withdrawn the amount belongs to her family and purchased property in the name of defendant No.5 on 18-05-2020. Therefore the said property is joint family property of her family. Therefore the presence of opponent is necessary to decide the matter effectively and prayed to allow the application.

3. On the other hand, the plaintiff and proposed defendant have opposed the application by filing separate written objections and stated that opponent is brother of defendant No.4, either defendant No.4 or defendant No.5 no way concerned to the family of the plaintiff and defendant No.1 to 3. The plaintiff No.1 is wife of deceased Channayya, plaintiff No.2 and defendant No.1 to 3 are daughters of deceased Channayya, only these five persons are class-I heirs to the deceased Channayya. The defendant No.2 and 3 have no right to file the IA under Order 1 Rule 10(2) CPC, it is only look out of the

plaintiffs who are the necessary parties in this case. The defendant No.2 has not stated clearly on what basis opponent is necessary party in this suit. Since he is not coparcener or member of the joint family. The defendant No.2 and defendant No.3 are claiming share in the suit properties on the basis of partition deed dated 11-08-2020. Therefore the opponent is not necessary party to the case.

4. Heard on I.A.

5. The following points arises for my consideration.

1. **Whether the opponent is proper and necessary party to the suit?**
2. **What order?**

6. My answer to the above points is as under:

POINT NO.1 - In the Negative
POINT NO.2 - Is as per the final order for the following:

:: REASONS ::

7. **Point No.1**: The plaintiffs have filed this suit for partition and separate possession against the defendants, when the case was posted for written statement of defendant No.4, the defendant No.2 has filed application stating that she know the facts and circumstances of the case. The plaintiff No.1 is her mother, the plaintiff No.2 and defendant No.1 and 3 are her

sisters. Her parents had four daughters and no male issues. Her father died on 29-07-2020 at Gothe village due to ill-health. During the lifetime of her father performed marriage of all four daughters. The plaintiff No.2 given in marriage to Gourimath family of Hole-Aluru village and except all three daughters are residing in their husbands house. The plaintiff No.2, her husband and children are residing in the house of her parents. The defendant No.4 is looking after landed properties and shops. Her mother is illiterate she is not having knowledge of family affairs. After death of her father on 11-08-2020 the plaintiffs and defendant No.1 to 3 have got partitioned the properties under memorandum of family arrangement. Her mother is having account No.2259 at Primary Agricultural Co-Operative Credit Society Ltd., Gothe and on verifying the same, it came to her knowledge that the defendant No.4 has withdrawn Rs.11,19,000/- on 15-07-2020 by using thumb impression of her mother and now there is only balance of Rs.914/-. The defendant No.4 has withdrawn the amount belongs to her family and purchased the property in the name of defendant No.5 on 18-05-2020. Therefore the said property is joint family property of her family. Therefore the presence of opponent is necessary to decide the matter effectively.

8. In the affidavit the defendant No.2 has stated that the defendant No.4 has withdrawn an amount of Rs.11,19,000/- from the account of defendant No.1 and the defendant No.4 has purchased plot No.30 and 73 at Mahalabagayat village, Tq: Vijayapur on 18-05-2020, therefore the said property is purchased out of joint family income.

The amount as alleged in the affidavit is not subject matter of the suit schedule property. If an amount of Rs.11,19,000/- is subject matter of the suit schedule then matter would be different. As per the averments of affidavit the defendant No.4 alleged to have withdrawn an amount on 15-07-2020 and in the same para she has stated that the defendant No.4 has purchased plot No.30 and 73 on 18-05-2020, therefore itself shows that the alleged purchase of the plot No.30 and 73 is prior to 15-07-2020. Further the defendant No.2 has not produced any documents to substantiate her contention nor produced any single document to support her IA.

9. The plaintiff is dominus litis, and is not bound to sue other claimants in the same suit and the plaintiff may choose to implead only those persons as defendants against whom he wishes to proceed. Further the defendant No.2 has not stated any compelling reasons to consider the IA. The plaintiffs have filed

the suit, the burden is on them to prove their case. The defendant No.2 would have taken defence of non-joinder of necessary party, therefore it is opinion of the court that the defendant No.2 has not made out grounds to consider I.A. Hence, looking to any angle the application is not maintainable and deserves to be rejected. Hence point No.1 answered in **Negative.**

10. Point No.2: In view of the above discussion, I proceed to pass the following:

ORDER

**I.A.No.8 filed by the
defendant No.2 under Order 1
Rule 10(2) R/w 151 of C.P.C is
hereby rejected.**

(Directly dictated to Stenographer on Lap-tap, print out taken by her, corrected and then pronounced by me in Open-Court this the 3rd day of August - 2022).

**Sd/-
Addl. Senior Civil Judge
Jamkhandi.**