

KABK730064622021



R.A./5079/2021

**IN THE COURT OF I ADDL. DISTRICT & SESSIONS JUDGE, BAGALKOT
TO SIT AT: JAMKHANDI, AT: JAMKHANDI.**

* * *

Before: Sri. Arjun S. Mallur.

B.A.L.,LL.B.,

**I Addl. District & Sessions Judge,
Bagalkot to sit at Jamkhandi**

Dated: This the 15th day of December- 2023

RA No.5079/2021

Appellants

1) Smt.Shainaj W/o Pradeep Latakar
And others

-Vs -

Respondents:

1) Sri.Shivanand S/o Madhukar Patil,
and others

I.A No-3

Applicant/

1) Sri.Rajanikant S/o Manohar Jagadal,
Age: 45 years Occ: Government Service,
R/o Vijayapur Tq & Dist: Vijayapur

proposed respondent No-7

(by Advocates Sri.P.V.Kulkarni)

- Vs -

Opponents/

- 1) Smt.Shainaj W/o Pradeep Latakar
And others

(by Sri.A.P.Lokapur Adv)

i.	Provision under which the application is filed	U/Order 1 Rule 10(2) R/w Sec.151 of CPC.
ii.	Relief sought for	Sought for Impleading applicant as respondent No-7 to the appeal
iii.	The date on which the application is filed	07.07.2023
iv.	Number of the application	I.A No-3
v.	The date on which the objections are filed by different opponents.	03.08.2023
vi.	The date on which the orders were passed on the said application	15.12.2023

::ORDERS ON I.A-III::

I.A No-3 is filed by the applicant Rajanikant S/o Manohar Jagadal resident of Vijayapur U/o 1 Rule 10(2) R/w 151 of CPC seeking to implead himself as proposed respondent No-7 to the present proceedings.

2. It is contended by the applicant that he is legatee under the will

executed by present respondent No-3 Sabu who died on 07.05.2020. It is submitted that said Sabu executed a registered will dated 25.02.2020 bequeathing all the suit properties in favour of the applicant and thereafter he died on 07.05.2020. Subsequently the applicant has filed a suit in O.S No.17/2021 on the file of Prl.Senior Civil Judge Jamkhandi seeking declaration of his rights and legatee under the will executed by Sabu and said suit is pending for adjudication. It is submitted that in the present appeal the trial court has dismissed the suit and an observation has been made to the in the trial court to the effect that the respondent No-3 Sabu only could have succeeded to the suit schedule properties and therefore under such circumstances the applicant becomes a proper party to the present proceedings and if the appeal is decided in his absence it would cause untold hardship and lead to multiplicity of the proceedings and therefore on these grounds sought for impleading himself as respondent No-7 to the appeal.

3. The appellants have filed statement of objections contending that the applicant was not party before the trial court and no justifiable grounds have been made out by the applicant to be impleaded as respondent to the present appeal and as the impugned judgment of the trial court is not challenged in this appeal, the observations made

therein will have no biding regarding the right of the applicant to be impleaded as respondent and that Sabu has died leaving behind his wife Kasturi and 6 daughters and son who are respondent No-3(a) to 3(h) in this appeal and therefore the applicant is neither proper party nor a necessary party and on these grounds sought for rejecting the application.

4. Heard the learned counsel appearing for the appellants on I.A No-3 and the learned counsel for the respondents. Perused the records.

5. Point for consideration is as under;

1) Whether the appellant has made out justifiable grounds to be impleaded as proper party to the present appeal as respondent No-7?

2) What order?

6. My answer to the above points are as under;

Point No-1: In the **Affirmative**,

Point No-2: As per final order for the following;

::REASONS::

7. **Point No-1:-** The defendant No-4 to 9 have preferred this appeal challenging the judgment and decree passed by the learned Prl.Senior Civil Judge Jamkhandi in O.S No.107/2015 dated 08.02.2021. The suit came to be filed by one Shivanand Madhukar Patil who is the present

respondent No-1 for declaration and injunction with respect to suit schedule properties. After contest the suit came to be dismissed vide impugned judgment and decree. Being aggrieved by it the defendant No-4 to 9 are in appeal before this court. The plaintiff has neither filed any cross-appeal or cross-objections.

8. The applicant under the present application contends that the deceased defendant No-2 during his life time executed a registered will dated 25.02.2020 bequeathing all the suit schedule properties in his favour and thereafter he has died on 07.05.2020. The applicant has already filed a suit in O.S No.71/2021 for declaration of his status as legatee under the will to the suit properties. The said suit is pending for adjudication. In the present appeal the said Sabu has been arrayed as respondent No3- and after his death respondent No-3(a) to 3(h) are made as parties being surviving legal heirs of deceased Sabu. The applicant has specifically contended that the suit properties have been bequeathed in his favour by deceased Sabu under registered will. The suit was one for declaration as well as partition and separate possession of the plaintiffs 1/4th share in the suit properties.

9. The trial court in the course of judgment has observed that with respect to the suit properties it was only Sabu who could have inherited

the properties from his father Shivappa. As the applicant contends that he is legatee under the will executed by deceased Sabu with respect to the suit properties. Now in the circumstances of the case he does become a proper party to be impleaded as respondent in the appeal. Impleading the applicant as respondent would not in any manner change nature of the suit or cause prejudice the interest of the respondents or appellants. Therefore under these circumstances the applicant is construed as proper party to the present proceedings and is liable to be impleaded as respondent. Accordingly I answer **point No-1 in the Affirmative.**

10. Point No-2:- For the aforesaid reasons I proceed to pass the following;

ORDER

I.A No-3 filed by the applicant U/o 1 Rule 10(2)

R/w 151 of CPC **is allowed.**

The applicant Rajanikant S/o Manohar Jagadal resident of Vijayapur shall be impleaded as respondent No-7 to the present appeal.

The appellants shall amend the appeal memo accordingly and file amended appeal memo.

No order as to costs.

(Dictated to the stenographer, typed by him, script corrected, signed by me and then pronounced in the open court on this the **15th day of December, 2023**).

(Sri. Arjun S.Mallur.)
I Addl. District & Sessions Judge,
Bagalkot to sit at: Jamkhandi

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