

**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE
& J.M.F.C., AT DEVANAHALLI.**

PRESENT

**SRI. PATIL HARISH RANGANAGOWDA,
B.A., LL.B.(Hon's)**

Addl. Senior Civil Judge & J.M.F.C.
Devanahalli.

Dated this day of 07th January 2023.

O.S.No.102/2013

Smt. Narayanamma & Others : **Plaintiffs**

(Plts. - By Sri. D.N.N.,
Advocate)

- V/s. -

Sri. Nanjappa & Others : **Defendants**

(D1 & 2 - By Sri. M.R.,
Advocate)
D3,4 - Ex-parte.
PD.4 - Ex-parte.
D2(a,b,c) - By Sri. K.V.K.,
Advocate)

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ORDER ON I.A. FILED U/o.1 RULE 10(2) OF C.P.C.

The applicant by name Smt. Kempamma W/o Ramanna
seeks to implead herself as additional defendant to the suit on

the ground that, she too belongs to joint family consisting of plaintiff and defendants. According to her one Nanjappa was the original prapositurs. He died leaving behind 4 sons namely Byrappa, Munivenkatappa, Pillappa and Appayanna. The said sons got divided the joint family properties under partition deed dated 22-10-1978. The "B" schedule properties mentioned in the said partition deed has been fallen to the share of Appayanna and Pillappa jointly. She is the daughter of said Pillappa. Therefore she herself and other parties to the suit are entitled to claim the said properties. Therefore she seeks to implead her as party to the suit.

2. The plaintiffs and defendants have objected the said application by contending that, the proposed defendant herself executed registered release deed dated 05-03-2009 by releasing her right over suit property. Therefore she is not entitled to claim any share overs suit property. Hence they seek to reject the applicant. Heard arguments.

3. Having heard arguments, the following point would arise for my consideration.

1. Whether the applicants made out ground to implead herself as party to the suit. ?
2. What order?

4. Having heard and having considered the material on record my findings to above points is as under :

Point No.1: In the Affirmative

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

REASONS

5. Points No.1: Admittedly the plaintiffs have filed this suit seeking for the relief of partition and separate possession of their share over the suit properties by contending that, they themselves and defendants are the lineal decedents of one Nanjappa who died leaving behind 4 sons namely Byrappa, Munivenkatappa, Pillappa and Appayanna. According to them the said 4 sons have got divided the joint family properties under partition deed dated 2-10-1978. The "B" schedule properties mentioned in the partition deed were fell to the share of Pillappa and Appayanna jointly. The said Pillappa had lone daughter by name Munikempamma who got separated from joint family by executing release deed the dated 05-03-2009. Therefore they themselves and defendants continued in the joint family as undivided members. The suit properties are liable to the divided among themselves and defendants. Hence they seek to effect partition and separate possession of their share over the suit property. The defendants have appeared and contested the suit by opposing the claim of plaintiff on the ground that, the suit item No.1,3,4,10,11,14 and 15 are the self acquired properties. Therefore they are not available for division.

6. Based on the said pleadings, this court framed as many as 08 issues. The parties were directed to address the said issues. One of the plaintiff lead evidence as PW1. When the case is set down for cross examination of P.W.1, the present

application came to be filed by the applicant seeking to implead her as party to the suit on the ground that, she is also a member of joint family. It is pertinent to mention here that, the relationship claimed by the applicant and other parties to the suit has not been disputed. In fact the plaintiffs and other defendants have contended that the applicant has executed registered release deed on 05-03-2009 by releasing her right over suit property. Therefore the pleadings indicate execution of release deed by the applicant on 05-03-2009. The applicant did not whisper about the said release deed. She has filed written argument attributing some allegation against defendants in getting execution of said deed. The conduct of applicant could be examined in the suit by permitting her to come on record. She has approached the court after lapse of nearly about 13 years from the date of said deed. The said conduct needs to be appreciated in the trial. Any how the pleadings indicate the act of execution of release deed by the applicant. The said fact need to be examined in the presence of applicant which would help the court in complete and effective adjudication of lis. The presence of applicant would assist the court in complete adjudication of lis. Therefore the applicant is treated as proper party to the suit in her presence the event of execution of release deed could be examined by taking into account of her conduct. Therefore considering the relationship and cause mentioned by the plaintiffs in their plaint i hold that, the applicant is proper party to the suit and in her presence an effective decree could be passed. **Therefore i hold above point in the Affirmative.**

7. **Point No.2** : In the light of aforesaid finding on the above said point, i proceed to pass the following :

O R D E R

The I.A. filed by applicants U/o.1 Rule 10(2) of C.P.C is hereby allowed and applicant is permitted to implead herself as defendants No.6 to the suit. The plaintiffs shall carryout necessary amendment and shall file amended plaint by next date. The conduct of applicant in complaining about the said deed after lapse of 13 years from the date of execution of release deed will considered in the trail.

**Call on : 06.02.2023 for
furnishing of amendment plaint.**

(Dictated to the Stenographer, transcribed and computerized by her, same is corrected and then pronounced by me in the open court on this the 07th Day of January 2023).

**(SRI. PATIL HARISH RANGANAGOWDA)
Addl. Senior Civil Judge & J.M.F.C.,
Devanahalli.**