

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 25th October 2022.

O.S.No.129/2009

1. Smt. Saraswathamma : **Plaintiffs**
Aged about 25 years,
W/o Byregowda,
D/o Late T.M.Narayanawamy,
Resident of Ilthore Village,
Kundana Hobli,
Devanahalli Taluk,
Bangalore Rural District.
2. Smt. Manjula,
Aged about 22 years,
W/o K.N.Nagaraju,
D/o Late T.M.Narayanawamy,
Resident of Kakaeluther Village,
Perasandra,
Chikkaballapura Taluk & District.
3. Smt. Munirajamma
Aged about 30 years,
D/o Late Ramaiah,
Agriculturist,
Resident of Ilthore Village,
Kundana Hobli,
Devanahalli Taluk,
Bangalore Rural District.

4. Sri. Ramamurthy,
Aged about 23 years,
S/o Ramaiah,
Agriculturist,
Resident of Ilthore Village,
Kundana Hobli,
Devanahalli Taluk,
Bangalore Rural District.

(Plts. - By Sri. L.S.,/ H.T.,
Advocate)

- V/s. -

1. Smt. Akkayamma,
Aged about 46 years,
W/o Late Ramaiah,
Agriculturist,
R/at: Ilthore Village,
Kundana Hobli,
Devanahalli Taluk,
Bangalore Rural District. : **Defendants**
2. Sri.T.M.Narayanaswamy,
Aged about 46 years,
S/o Muniyappa,
R/at: Ilthore Village,
Kundana Hobli,
Devanahalli Taluk,
Bangalore Rural District.
3. Sri. Nagaraju,
Aged about 24 years,
S/o T.M.Narayanaswamy,
Agriculturist,
R/at: Ilthore Village,
Kundana Hobli,
Devanahalli Taluk,
Bangalore Rural District.
4. Sri. Ramesh Solanki,
Aged about 30 years,
S/o Mongilal Solanki,

R/at: No.3, 1st Floor,
St. Johns Church Road,
Bharathinagar,
Bangalore - 560 001.

Power of Attorney Holder of
defendants 1,2 & 3 respectively,
Sri. R. Mahendra Kumar Shah,
S/o Mr. Raichand Shah,
Aged about 53 years,
R/at: Flat No.301,
Krishna Apartments,
No.44/55, Digvijaya Plot,
Jamnagar -365 005,
Gujarath State,
Presently camped at
Flat No.1B, Castle Rock,
No.26, 1st Main, Jayamahall,
Bangalore -560 046.

Represented by his GPA Holder,
Mahesh Shah,
S/o Late Srikrishna Shah,

5. Sri. M. Muniraju,
Aged about 40 years,
S/o Late Muniyappa @ Pillamuniyappa,
6. Sri. Venkatesha,
Aged about 37 years,
S/o Late Muniyappa @ Pillamuniyappa,

5 & 6 are R/at
Illthore Village,
Kundana Hobli,
Devanahalli Taluk.

7. M/s. Affinity Real Estate Private Limited,
(Earlier Known as
M/s. Nikkima Real Estate Prv.Ltd.)
Having its registered office No.12,
2nd Floor, 1st Main, Jayamahall Extension,
Bangalore- 560 046,
Retd. By its Director,

Mr. Kevalkumar Shah,
S/o Mansukhlal Shah.

(D1 to 3 - By Sri. S.K.,
Advocate)
D4 - Ex-parte.

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ORDER ON I.A. FILED BY 3rd PARTY APPLICANTS U/o.1
RULE 10(2) OF C.P.C.

The 3rd party applicants by name Smt. Rajamma, Ramalakshmi, Ramesh, manjula have filed this application U/o.1 rule 10(2) of C.P.C. seeking to implead them as defendant No.5 to 9 to the suit. The present application is filed at the stage of defendant evidence. Before proceeding with the said application, the facts need to be mention hereunder.

2. Facts of case are unfurled here under : It is pleaded by the plaintiffs that, they themselves and defendant No.1 to 3 constitute Hindu undivided joint family. According to them one Ramaiah S/o Muniyappa was the original prapositus who died leaving behind 5 sons namely Narayanaswamy, Ramaiah, Muniraju, Muniyappa and Venkatesh. The said 2 brothers Narayanaswamy and Ramaih continued in joint family and whereas other three brothers namely Muniraju, Muniyappa & Narayanaswamy got divided from the joint family. The said Narayanaswamy is the father of plaintiff No.1 & 2. The plaintiff No.3 & 4 are the daughter & son of Ramaiah. The defendant

No.1 is the wife of said Ramaih. The defendant No.2 is the said Narayanaswamy. The defendant No.3 is the son of Narayanaswamy. Therefore they themselves and defendant No.1 to 3 constitute Hindu undivided joint family and suit property is the joint family property of themselves and said defendants No.1 to 3. The defendants No.1 to 3 behind their back alienated an area measuring 2 acre in favour of defendant No.4 through their Power of Attorney who is defendant No.5 under registered sale deed dated 26.08.1996 and 28.08.1996. The said sale deeds are not binding on them. Therefore they seek to effect partition and separate possession of their share over suit property which was turned down by the defendants. Hence they filed this suit. The file indicates that, the defendant No.8 got impleaded as party to the suit. The said defendant No.8 opposed the suit by filing written statement. The defendant No.8 is the purchaser of suit property from defendant No.5. The defendant No.6 and 7 got impleaded and filed counter claim. The plaintiff No.4 led evidence as P.W.1. The defendant did not choose to cross examine him. The case was posted to defendant evidence. At this stage the above said applicants have filed this application seeking to implead them as necessary parties to the suit.

3. According to them one Muniyappa was the original prapositus who had 8 childrens namely P.M. Narayanaswamy, Ramaiah, Muniyamma, Venkatalakshamma, Byregowda, Rajamma, Muniraju, Venkatesh. The applicant No.1 is the said Rajamma. The applicants No.2 to 4 are the children of said Venkatalakshamma. Therefore they have contended that,

they have also interest over the suit property. The plaintiffs have objected the said application by contending that, the partition has already taken place between Muniyappa and his sons under Panchayat Parikat dated 12.04.1996. Therefore by virtue of said partition they revenue records entered the name of said sharers. The said Muniyappa and his sons have alienated the joint family property under registered sale deed dated 24.04.1996. Therefore it indicates that, the said partition has been acted upon. Therefore they have contended that, the applicants have no right to interfere in the on going litigation. Hence they seek to reject the application. Heard both the sides.

4. Having heard both the sided,the following point would arise for my consideration.

1. Whether the applicants made out ground to implead in the present suit. ?
2. What order?

5. Having heard and having perused 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

6. Points No.1: Admittedly the plaintiffs claimed that, the original prapositus Muniyappa had 5 sons namely Narayanaswamy (defendant No.2), Ramaiah (husband of defendant No.1), Muniraju, Muniyappa and Venkatesh. They claimed that, the 3 sons of Muniyappa namely Muniraju, Muniyappa and Venkatesh got divided and Narayanaswamy and Ramaih continued in the joint family. Admittedly they did not wisper about the daughters of said Muniyappa. Now one of the daughter of said Muniyappa by name Rajamma seeks to implead herself as party to the suit. The children's of other daughter of Muniyappa namely Venkatalakshmamma have also seek to implead them as party to the suit. The objection of plaintiff is about the event of partition between the sons of Muniyappa in the year 1996. The said contention could be considered by framing appropriate issues. The request of impleadment sought by the applicants cannot be rejected by accepting the said contention of partition. The contention of plaintiff about the division of properties have to be proved in the trail. Therefore keeping open the rights of parties and to impart conclusive justice to the parties, I deem it appropriate to permit the applicants come on records as additional defendants to the suit. The plaintiffs are entitled to file rejoinder to the said claim of applicants. Therefore considering the cause shown in the application and to impart conclusive the justice I.A. needs to be allowed. **Hence 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 :

ORDER

The I.A. filed by applicants U/o.1 Rule 10(2) of C.P.C is allowed and applicants are permitted to implead themselves as defendants No.5 to 9. The plaintiffs are directed to carry out amendment accordingly.

(Dictated to the Stenographer, transcribed and computerized by her, same is corrected and then pronounced by me in the open court on this the 25th Day of October 2022).

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