

18-11-2022

The counsel for plaintiff No.1(d) filed objections to the I.A. No.9 to 11 filed by defendant No.1(b)(i) to 1(b)(iv), 1(c) and 1(e).

The plaintiff No.1(b)(i) to 1(b)(iv), 1(c) and 1(e) have filed these applications under order 1 Rule 10(2) of C.P.C. and under order 6 Rule 17 of C.P.C. seeking to transpose the plaintiff No.1(d) as defendant to the suit and delete the defendants No.1 to 11 and part of suit item No.1 to 3 property to an extent of 50% from the suit proceeding. They have contended that subsequent to filing of suit, the partition took place between original plaintiff Narayanappa and his siblings i.e., defendants No.1 to 11. Therefore the said Narayanappa had bequeathed the part of suit properties to an extent of 50% to plaintiff No.1(b) under registered Will Deed dated 25-07-2013. Therefore the legal heirs of plaintiff No.1(b) and plaintiff No.1(c) & 1(e) seeks to transpose the plaintiff No.1(d) as defendant to the suit and delete the portion of suit item No.1 to 3 property and defendants No.1 to 11 from the proceeding.

The plaintiff No.1(d) opposed the said application by denying the execution of alleged Will Deed dated 25-07-2013. She seeks to adjudicate her claim of partition over entire suit properties.

O.S.No.638/2012

Heard counsel for plaintiff No.1(d) and plaintiff No.1(b)(i) to (iv), 1(c) & 1(e) on the said applications.

The present suit is filed by one Narayanappa S/o Chikkadasappa claiming half share in the suit property by contending that he himself and defendants No.1 to 11 constitute Hindu undivided joint family being Lineal decedents of one Donniga. During pendency of present suit, the said Narayanappa died.

The counsel appearing for plaintiff by name Sri. N.R.R. had filed I.A. U/o. 22 Rule 4, 9 of C.P.C. and Section 5 of Limitation Act seeking permission to bring all childrens of original plaintiff as plaintiff No.1(a) to (e). The said applications have been filed on 26-07-2013. The plaintiff No.1(b) who is now claimed to be the beneficiary of Will has sworn to the contents of affidavit filed along with said applications explaining the necessity to bring all childrens of original plaintiff Narayanappa. The vakalath filed by Sri. N.R.R. indicates that the plaintiff No.1(d) has not given power to appear. The said applications were allowed by order dated 02-08-2019 by permitting all the childrens of Narayanappa to pursue the suit as legal heirs.

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Thereafter the plaintiff No.1(d) appeared through her counsel by name Sri. M.M. and filed application under order 1 Rule 10(2) of C.P.C. seeking to transpose the legal heirs of plaintiff No.1(b) as additional defendant to the suit on the ground that they have claimed contrary interest over suit property by virtue of disputed Will. The legal heirs of plaintiff No.1(b) and plaintiff No.1(c) & (e) have opposed the said request.

The copy of Will produced by plaintiff No.1(d) indicates that the said Narayanappa had bequeathed his undivided interest over suit property. The said Will has been seriously disputed by one of the daughter of Narayanappa. The said Narayanappa had died on 10-11-2016. The plaintiff No.1(b) herself filed applications U/o. 22 Rule 4, 9 of C.P.C. and Section 5 of Limitation Act seeking permission to bring all childrens of Narayanappa as legal heirs. She has not narrated about the execution of said Will in the said applications.

Now by virtue of said Will the legal heirs of plaintiff No.1(b) seeks to transpose the plaintiff No.1(d) as defendant to the suit. If the said request is allowed, it would change the entire nature of suit from partition to declaration. The applicants have not explained as to when the partition took place between plaintiff Narayanappa and his siblings. Therefore it is not proper to transpose the plaintiff No.1(d) as defendant to the suit.

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On the other hand it is convenient to transpose the legal heirs of plaintiff No.1(b), 1(c) & 1(e) as additional defendant to the suit as they claim contrary interest against one of the daughter of original plaintiff. Therefore reserving liberty to the beneficiary of said Will to prove the said partition and execution of Will, I deem it appropriate to transpose the legal heirs of plaintiff No.1(b), plaintiff No.1(c) & (e) as additional defendants. The request made by said legal heirs to delete the defendants No.1 to 11 and portion of suit property cannot be considered in the light of claim made by plaintiff No.1(d) over the said property on the alleged issue of having partible interest over the suit property. Accordingly, the I.A. No.9 to 11 are rejected.

The I.A. No.8 filed by plaintiff No.1(d) under order 1 Rule 10(2) of C.P.C. is allowed and legal heirs of plaintiff No.1(b) are directed to implead as additional defendant to the suit. Accordingly, the I.A. filed U/o. 22 Rule 4 of C.P.C. is disposed of by directing the legal heirs of plaintiff No.1(b) to implead as additional defendants. The plaintiff No.1(c) & (e) are directed to say on their status as legal heirs of original plaintiff.

Call on : 09-12-2022.

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