

08.09.2022

Pltf. - B.M.B.
D1, 3, 4 - M.R.R.
D2, 5 - Exparte
Imp. Aplnt - M.R.R.

For Orders

ORDERS ON I.A.No.8

The applicants / proposed defendants No.1 to 5 have filed the above I.A.No.8 under Order 1 Rule 10(2) read with Section 151 of C.P.C and they seek permission to come on the record to contest the above suit filed by the plaintiff.

2. In support of I.A.No.8, the applicant No.4 has filed his affidavit for himself and also on behalf of other applicants by deposing on oath. He has contended in the affidavit that, plaintiff was born to K. Narayanappa through Lakshmamma and after the death of plaintiff's mother, plaintiff was taken to his maternal grand parents house and till his marriage, plaintiff was residing in his grand parents house. After the death of plaintiff's mother, plaintiff's father K. Narayanappa had married one Bachhamma and said Bachhamma gave birth to the applicant No.1 by name Sarojamma and Bachhamma was died thereafter. Again, the plaintiff's father K. Narayanappa had married one Munithayamma and begotten the applicants No.2 to 5 through said Munithayamma. The mother of applicants No.2 to 5 and

father of plaintiff and applicants No.1 to 5 were died and the plaintiff and the above applicants have succeeded to the estate of their father. The plaintiff has suppressed all these facts and by claiming him as the only one son of K. Narayanappa, the plaintiff has filed application for change of revenue records in his name. Along with defendant No.1, the applicants have filed Revenue Appeal as per R.A.No.132/2015-16 and the same is pending for consideration. Since the applicants are also legal representatives of late K. Narayanappa, they are also necessary parties in this suit filed by the plaintiff for the relief of partition and therefore, they have prayed for allowing their application to come on the record as defendants No.6 to 10 in the suit.

3. The plaintiff has filed objections to the I.A.No.8 and his main objections are those of not being aware of the proposed defendants being children born to his father's second and third wives. Therefore, he has prayed for dismissal of the I.A.No.8.

4. The proposed defendants and plaintiff have addressed arguments on the I.A.No.8. The applicants have produced photocopy of Order passed by the Assistant Commissioner in R.A.No.132/2015-16 dated 30.11.2018.

5. After appreciating facts and circumstances leading upto filing of the I.A.No.8, the following points are arisen for consideration:

POINTS

1. Whether the applicants / proposed defendants No.1 to 5 show that, they are proper and necessary parties without whom the suit cannot be completely disposed off?

2. What Order ?

6. The Court answer the above points as follows:-

Point No.1 : In the Affirmative

***Point No.2 : As per the final Order
For the following:***

REASONS

7. **Point No.1:-** The above suit is filed by the plaintiff for the relief of Partition and separate possession by claiming to be the only son of K. Narayanappa. The proposed defendants have contended that, plaintiff's father had married the mother of applicant No.1 after the death of plaintiff's mother and thereafter, plaintiff's father had also married the mother of applicants No.2 to 5. Though the applicants have not produced any documents showing their relationship with the plaintiff's father as daughters and sons born through second and third wives, they have contended that, along with the first defendant Chikka Kempaiah, the applicants have also filed R.A.No.132/2015-16 before the Assistant Commissioner. In fact,

the applicants have produced the Photocopy of the Order passed by the Assistant Commissioner for the inspection of the Court. The careful perusal of the said order shows that, together with the defendant No.1, the applicants have questioned the change of katha of the properties to the sole name of the plaintiff and the Assistant Commissioner was pleased to allow the Appeal by canceling the change of katha in the name of plaintiff. The plaint averments shows that, the plaintiff has contended that, he was the only son born to his father K. Narayanappa and the first defendant Chikka Kempaiah is the son born to the second wife of his grandfather Dodda Kenchappa. Therefore, the joining of defendant No.1 with the proposed defendants in filing Revenue Appeal by challenging mutation entries in the name of plaintiff indicates that, the proposed defendants are also related to the family of the plaintiff and defendant No.1 or otherwise, the defendant No.1 could not have joined the hands with the proposed defendants in filing the Revenue Appeal. The suit is for partition and separate possession and therefore, it is necessary for the parties to join all the parties and properties for final adjudication of the dispute involved in the suit and therefore, the proposed defendants are necessary parties in this suit for complete and final adjudication of the dispute involved in it. Therefore, the **Point No.1 is answered in the Affirmative.**

8. **Point No.2:-** For the above discussion, the Court proceed to pass the following:

ORDER

I.A.No.8 filed by the applicants / proposed defendants No.1 to 5 under Order 1 Rule 10(2) read with Section 151 of C.P.C. is hereby allowed.

The plaintiff is directed to amend the plaint by showing the applicants as defendants No.6 to 10 in the plaint and furnish the amended plaint on the next date of hearing.

The case is posted for the written statement of newly added defendants No.6 to 10 on 13.10.2022.

**(MADHUSUDHANA D.K.)
Prl. Senior Civil Judge & JMFC.,
Devanahalli.**