

**IN THE COURT OF SENIOR CIVIL JUDGE AND JMFC AT
HIRIYUR**

Dated this the 11th day of April-2023

**Present: SRI MOHAMMED MOINUDDIN,
B.A., LL.B., (Spl.)**

Senior Civil Judge and JMFC, Hiriya

O.S.NO.3/2014

PARTIES TO I.A.NO.19

Applicant : Ramakrishnappa & Others

Vs.

Opponent : Bhagyamma

ORDERS ON I.A. No.19

The defendants have filed this application U/O XIV R 5 of CPC, whereby they have prayed to frame two additional issues regarding non-joinder of necessary parties and also on limitation. As such they have prayed to allow the application.

2. The plaintiff has filed objections stating that, the application is not maintainable either in law or on facts, the instant application has been filed to drag on the proceedings to see that, plaintiff should not get any relief. Moreover, framing of additional issues is not required. As such, the plaintiff has prayed to reject the application with costs.

3. The following point arises for determination:

1. Whether the defendants have satisfied that, additional issues are necessary to adjudicate the controversy?

4. I have heard arguments from both sides and perused the available materials including the written arguments. My finding to the above point is in affirmative for the following:

REASONS

5. Point No.1:-The defendants at Para C of page No.3 in their written statement have categorically stated that, the suit item No.7 and 8 are in possession and enjoyment of one Nallammal and Junjappa as these properties were given to them in exchange deed dated:11.04.1988. Further on perusal of cross examination of PW.1 it appears that, she has admitted to the execution of exchange deed on 11-04-1988. In spite of that, the plaintiff did not take steps to implead them in the instant suit.

6. It is well settled law that, in a suit for partition and possession the heads of all branches including the purchasers or any other person who got the family property must be included in the suit else the suit must fail. Therefore considering the nature of suit and the defense taken by the defendants, in my opinion the presence of

Mallammal and Junjappa as defendants is necessary, in their absence it may not be possible to adjudicate the controversy effectively and conclusively.

7. Besides, considering the date of execution of exchange deed on 11-04-1988 and the defense of defendants in my opinion an issue on limitation aspect has to be framed. Thus for the discussion made above I am of the opinion that, the application is deserved to be allowed. Accordingly, I answer the above point in affirmative. In the result I proceed to pass the following:

ORDER

The I.A.No.19 filed by the defendants
U/o.14 R. 5 of CPC is allowed.

Thereby 2 additional issues have been
framed.

[Dictated to the stenographer, the same was typed by her, the transcript thereof is revised and corrected by me and then pronounced in the Open Court on this 11th day of April 2023]

(MOHAMMED MOINUDDIN)
Senior Civil Judge & JMFC,
Hiriyur.