

ORDERS ON I.A. No.5 FILED BY THE
PLAINTIFF U/O. I R. 10(2) R/W SEC 151
OF C.P.C

The plaintiff has filed this application U/O. I R. 10(2) R/W Sec.151 of CPC and prays the Court to implead Smt. Divya R. W/o Hanumanayaka as defendant No.3 to this suit.

2. This Court issued I.A. notice to the proposed defendant. In spite of service of notice, she did not appear before the Court and she remained absent.

3. I have heard Sri. TSR on this application.

4. The following points arise for my consideration.

1. Whether the proposed defendant is a necessary party to this suit ?

2. What order?

5. On the basis of the pleadings and the contentions taken by the plaintiff in her

application, my findings to the above points are as under:

Point No.1 : In affirmative

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

REASONS

Point No.1:

6. The plaintiff has filed this suit against the defendants seeking the relief of partition and separate possession of her 1/3rd share in the suit schedule properties by metes and bounds, to recover the mesne profits and for a declaration that, the gift made by defendant No.1 in favour of defendant No.2 is not binding on her share and for permanent injunction restraining the defendant No.1, his attorneys or any other persons claiming through him for alienating the suit schedule properties in any manner.

7. Now the case stands posted for cross examination of PW.1. The plaintiff contends that, the proposed defendant is a daughter of deceased daughter of her father through his first wife. The proposed defendant is a necessary party to this suit, as she claims right over the suit schedule properties through defendant No.1.

8. In all partition suits every right holder or share holder is a necessary party. Without their presence, the suit cannot be adjudicated effectively. When the plaintiff herself is claiming that the proposed defendant is the grand daughter of defendant No.1 through his first wife and when the plaintiff is claiming right over the suit schedule properties through defendant No.1, it is just and proper to implead Smt. Divya R as party to this suit.

9. A necessary party is one, in whose presence the Court cannot pass an effective decree at all. The proper party is one whose presence before the Court is necessary to ensure that all matters in dispute are effectively or completely determined. The only reason which makes it necessary to make a person a party to action is that he/she should be bound by the ensuing result and the question should be settled in the suit.

10. In a partition suit, failure to implead a person entitled to a share in the property, would amount to the suit being bad for non-joinder of parties. If the Court proceeds further in the matter in the absence of proposed defendant, her rights if any in the suit schedule properties will be defeated. Hence, proposed defendant is a necessary party to this suit and hence she has to be impleaded as defendant

No.3 to this suit. Accordingly, I answer point No.1 in affirmative.

Point No.2: For the afore said reasons, I proceed to pass the following:

O R D E R

I.A. No.5 filed by the plaintiff U/O. I R. 10(2) R/W Sec. 151 of C.P.C is hereby allowed.

No order as to costs.

The plaintiff is permitted to implead Smt. Divya R. W/o Hanumanayak as defendant No.3 to this suit, by suitably amending the cause title of the plaint.

To carry out amendment and to file amended plaint.

Senior Civil Judge & JMFC
Hiriyur.

**ORDERS ON I.A. No.8 FILED BY THE
PLAINTIFF U/O. VI R. 17 R/W SEC 151 OF
C.P.C**

The plaintiff has filed this application U/O. VI rule 17 R/W Sec.151 of CPC and prays the

Court to permit her to insert 3 additional properties in the schedule column.

2. The plaintiff has sworn an affidavit in support of this application contending that, she has filed this suit against the defendants seeking the relief of partition and separate possession of her 1/3 share in the suit schedule properties. After completion of her evidence, she came to now that there are some other properties which are available for partition and they are also joint family properties. She has got equal rights over those properties and hence it is necessary to insert those additional properties in the schedule column. Accordingly, she prayed the Court to allow her application.

3. The defendant No.1 and 2 objected this application and filed their written objections.

4. The defendant No.1 in his objection statement has denied the averments made in the application and he contends that, the properties now sought to be added in the schedule column are all his self acquired properties. The plaintiff has not produced any documents before the Court to show that it belongs to the joint family. The plaintiff has already taken cash from him towards her share. All the suit schedule properties are his self acquired properties and the plaintiff is falsely claiming right over those properties. Accordingly, he prayed the Court to dismiss the application with exemplary costs.

5. The defendant No.2 in his objection statement has denied the averments made in the application. He denies that the properties now sought to be added are available for partition and they are joint family properties.

The proposed item No.5 property is his self acquired property. He has purchased the same from his hard earned money and hence it is his absolute property. The plaintiff has no right to seek partition in those properties. The present application is filed just to drag on the proceedings. Hence, he prayed the Court to dismiss the application.

6. I have heard both the counsels on this application.

7. The following points arise for my consideration:

1. Whether the proposed amendment is necessary to elucidate the real dispute between the parties?

2. What order?

8. On the basis of the pleadings and the contentions taken by the plaintiff in her application, my findings to the above points are as under:

Point No.1: Affirmative

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

REASONS

Point No.1:

9. The plaintiff has filed this suit against the defendants seeking the relief of partition and separate possession of her 1/3rd share in the suit schedule properties by metes and bounds, to recover the mesne profits and for a declaration that, the gift made by defendant No.1 in favour of defendant No.2 is not binding on her share and for permanent injunction restraining the defendant No.1, his attorneys or any other persons claiming through him for alienating the suit schedule properties in any manner.

10. Now the case stands posted for cross-examination of PW.1. At this stage, the plaintiff intends to insert 3 more properties in the

column of the plaint, stating that, she has got equal rights in those properties, which are their joint family properties. The defendant No.1 contends that, the suit schedule properties are his self acquired properties. The defendant No.2 contends that, the proposed item No.5 property was purchased by him from his hard earned money.

11. The burden is casted on the plaintiff to prove that the properties now sought to be added in the schedule column are their joint family properties. Mere permitting the plaintiff to add the properties in the schedule column does not mean that she has got right over those properties and they are joint family properties.

12. While entertaining an application for amendment, the Court need not attempt to find out how the properties were acquired. Burden is casted on the plaintiff prove her right, when

she says that, the proposed properties now sought to be inserted in the schedule are also joint family properties and she has got equal right over those properties. Hence, it is just and proper to permit her to insert or add those properties in the schedule column.

13. The proposed amendment neither changes the nature of the suit nor it will introduce new facts. The proposed amendment is not contrary to the earlier pleadings. The proposed amendment will assist the Court in adjudicating the matter effectively. Now the plaintiff has to bear the cost for filing this application at this belated stage. By considering all these aspects, I answer point No.1 in affirmative:

Point No.2: For the afore said reasons, I proceed to pass the following:

ORDER

I.A. No.8 filed by the plaintiff
U/O. VI R. 17 R/W Sec. 151 of
C.P.C is hereby allowed on a cost
of Rs.400/-.

The plaintiff is permitted to
amend the plaint as sought in the
application. To carryout
amendment and to file amended
plaint. Call on .

Senior Civil Judge & JMFC
Hiriyur.