

ORDERS ON I.A.No.2 FILED BY THE
PLAINTIFFS U/O.I R.10(2) OF CPC

The plaintiffs have filed this application U/O. I Rule 10(2) of CPC and pray this Court to implead Sri. Panchanna S/o. Late.Pathegowda as defendant No. 3 to this suit.

2. The plaintiffs contend that, the proposed defendant is the son of deceased Pathegowda. They have filed the suit seeking the relief of partition and separate possession of their $\frac{1}{2}$ share in the suit schedule properties by metes and bounds. The defendants in their written statement have taken a contention that, the suit is bad for non joinder of necessary parties. The proposed defendant being the son of Pathegowda, is necessary party to this suit. Accordingly, they pray the Court to allow their application and implead Sri.Panchanna as defendant No. 3 to this suit.

3. This Court issued I.A. notice to the proposed defendant No. 3. In spite of service of notice, the proposed defendant No. 3 did

not appear before the Court. He remained absent.

4. I have heard Sri. M.V. Advocate on this application.

5. On the basis of the contention taken by the plaintiffs in their application, the following points arise for my consideration:

1. Whether the proposed defendant No. 3 is a necessary party to this suit and his presence is necessary to elucidate the real dispute between the parties?

2. What order ?

6. On the basis of pleadings and the contentions taken by the plaintiffs in IA No. 2, my answers 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:

7. The plaintiffs have filed this suit against the defendants seeking the relief of partition and separate possession of their ½

share in the suit schedule properties by metes and bounds.

8. Now the case stands posted for further chief examination of PW.1. At the stage, the plaintiffs intend to implead Sri.Panchanna S/o. Pathegowda as defendant No.3 to this suit. The plaintiff No. 4 has sworn an affidavit in support of this application contending that, the proposed defendant is the son of his father. He is his elder brother. Moreover, the defendants in their written statement have taken a defense that, the suit is bad for non joinder of necessary parties.

9. The plaintiffs contend that, the proposed defendant No. 3 co-operated them to file the suit. But, subsequently, he did not support them. He being the son of plaintiff No. 1 and brother of plaintiff No. 2 to 4 is a necessary party to this suit. In partition suits, all the sharers are necessary parties. In their absence, the Court cannot elucidate the real dispute between the parties.

10. The proposed defendant No.3 is the son of deceased Pathegouda. When such being the case, the proposed defendant No. 3 becomes necessary party and his presence is very much necessary to elucidate the real dispute between the parties. Accordingly, I answer point No. 1 in affirmative.

Point No.2: For the aforesaid reasons I proceed to pass the following:

ORDER

I.A.No.2 filed by the plaintiffs U/O. I Rule 10(2) of CPC is hereby allowed.

The plaintiffs are permitted to implead Sri. Panchanna S/o Late Pathegowda 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. Call on 30.11.2020.

Sr. Civil Judge & JMFC.,
Hiriyur.