

**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE AND
J.M.F.C., HIRIYUR**

Present: Smt. Farha Begum Sayed,

B.A., LL.B.,

Prl. Civil Judge and JMFC., Hiriyyur.

Dated this the 7th day of April-2021

O.S.NO.96/2019

Plaintiff : Sri. Hanumanthappa @
Hanumanthanna.

//Versus//

Defendants : Honnesha @ Honnappa & Others.

Parties on I.A.No.II

Applicant/3rd Defendant: Sadashivappa

//Versus//

Opponents/Plaintiff: Hanumanthanna

**ORDER ON APPLICATION UNDER ORDER 1 RULE 10(2)
RED WITH SECTION 151 OF CPC FILED BY THE 3RD
DEFENDANT**

1. The 3rd defendant has filed application U/O 1 Rule 10(2) R/W Sec.151CPC to implead the proposed defendant No.5 and 6 in this suit.

2. The plaintiff filed this suit for the relief of partition and separate possession against the defendants. The plaintiff filed this suit against 3rd defendant and others for partition and separate possession with respect to the alleged suit schedule properties. The 3rd defendant submit that, the defendant No.3 and other defendants along with the plaintiff already partitioned the ancestral and joint family properties, during the life time of father of defendant No.3. The plaintiff is the son of 1st wife of

Lingappa and he had already partitioned the properties owned and possessed by father of 3rd defendant.

3. Now the plaintiff come with the false and untenable suit, that, he is having right, interest share possession in the alleged suit properties. The 3rd defendant came to know that the properties which are fallen to the share of the plaintiff in the partition has been sold by plaintiff in favour of the application schedule persons through registered sale deed. The 3rd defendant is obtained the certified copy of the registered sale deed. Hence, the present plaintiff have no manner of any right, title, interest share or possession in the suit schedule properties. He has already got his share in the ancestral and joint family properties and he has separated from the joint family during the life time of father of defendant No.3, hence, he has no absolute right in the suit properties.

4. To substantiate the same, defendant No.3 is ready to file the relevant documents that the plaintiff already sold the some property, which are fallen to his share in the partition, hence, the proposed application schedule persons are very necessary and proper parties to the suit. This application filed for fair and proper adjudication of the suit without any malafide intention to drag on the proceedings, or defendant No.3 has not suppressing the true material facts. If, this application is allowed, it will advance the cause of justice, no prejudice loss or inconvenience will be caused to the defendants and on the other-hand if this application is not allowed, defendant No.3 will be put to great hardship, inconvenience and irreparable loss. Under the facts and circumstances the defendant No.3 swear in the interest of justice that this Hon'ble Court may kindly be pleased to order for allow this application in the interest of equity and justice.

5. On the other hand plaintiff filed objection to the said application. The said plaintiff denied all the averments of the affidavit filed by the proposed defendant No.3. As per the contention of this plaintiff, the application filed by the defendant No.3 is not maintainable in law and on facts. The 3rd defendant sworn false affidavit in order to file this false and fictitious application. The proposed defendant No.5 and 6 are not necessary parties to this suit. The proposed defendants are not co-parceners or sharers to suit schedule properties and plaintiff and defendant. The proposed defendant No.5 and 6 are not successors or there is no joint states between proposed defendant No.5 and 6 and plaintiff and defendant. The proposed defendants not purchased any property from the plaintiff. The defendant No.3 not produced any documents to show the proposed defendant No.5 and 6 are the necessary parties to the suit and the proposed defendant No.5 and 6 are not purchased the suit schedule properties. The defendant No.5 has filed this application in order to drag the proceedings only. If the Hon'ble Court reject the application no loss or injustice caused to defendants. On the other hand if the Hon'ble court allow this application the plaintiff will be put into greater hardship and loss. Therefore, it is respectfully prays that the Hon'ble court may kindly be pleased to order to dismiss the application U/o 1 Rule 10(2) with costs in the interest of justice and equity.

6. On the basis of pleadings, application and objections filed to the application, following point arise for consideration:

- 1. Whether the proposed defendant No.5 and 6 are the necessary parties to the suit and in their absence no effective decree can be passed by this court?**

2. What Order?

7. Heard both counsel for plaintiff and defendants, perused material placed on record and my findings on the above points are as under:

Point No.1: In the Negative

Point No.2: As per the final order

for the following:

-:: R E A S O N S ::-

8. **Point No.1:-** This suit is filed by the plaintiffs against the defendant for the relief of partition and separate possession. In the backdrop of the contention taken by both the parties, I have made a detail consideration of the suit.

9. The plaintiff and defendants allegedly constituting Hindu-undivided joint family and as alleged the suit schedule properties are the ancestral and joint family properties of plaintiff and defendants. The defendant have contended that the joint family properties have been already partitioned. Now the 3rd defendant has filed the present application contending that the plaintiff has disposed of his share of properties in favour of proposed defendant No.5 and 6. That the defendant No.5 and 6 are the necessary parties to the suit.

10. But the suit is for partition and separate possession of suit schedule properties. The proposed defendants are not the family members or sharers of family properties. Hence, they are not the necessary parties to the suit. But they are only proper parties. Further, the burden lies upon the defendants to prove the alleged partition. If, the plaintiff has alienated any family properties as alleged in favour of proposed defendants, the defendants can prove the same by

leading documentary evidence. Hence, the defendants being the proper parties cannot be impleaded in the suit. Further, the suit can be adjudicated without the presence of proposed defendants. The alienation of family properties can be proved through pleading documentary and oral evidence. Hence, the present application does not deserves to be allowed. **Hence, I answer the above point No.1 in the Negative.**

11. Point No.2:-

In view of above discussion and conclusion arrived at point No.1, the application filed by the defendant No.3 is liable to be dismissed. Accordingly, I proceed to pass the following.

-:: O R D E R ::-

**I.A.No.II filed by the defendant No.3
under Order I Rule 10(2) R/w Sec 151
of CPC is hereby dismissed.**

No order as to costs.

(Dictated to Stenographer, transcribed and computerized by him, script corrected, signed and then pronounced by me in open court on this 7th day of April-2021)

(FARHA BEGUM SAYED)
Prl. Civil Judge & JMFC.,
Hiriyur.

Heard on IA No.II
for order by 20/02/2021

Prl. Civil Judge and JMFC.,
Hiriyur.

For order by 06/03/2021

Prl.Civil Judge and JMFC.,
Hiriyur.

For order by 19/03/2021

Prl.Civil Judge and JMFC.,
Hiriyur.

Order pronounced in the open Court
[vide separate order]

ORDER

**I.A.No.II filed by the defendant
No.3 under Order I Rule 10(2)
R/w Sec 151 of CPC is hereby
dismissed.**

No order as to costs.

Prl. Civil Judge and JMFC,
Hiriyur.

