

ORDERS ON IA No.II

The plaintiffs have filed an application U/O I Rule 10(2) R/w Sec.151 of CPC, for impleading the proposed defendant No.9 in the ends of Justice and equity.

2. In the affidavit accompanying to the application, the plaintiff has stated that, the present suit filed against the defendant for the relief of partition and separate possession. During the time of filing the present suit the plaintiff did not have the knowledge that, the proposed defendant No.9 was also a joint family member. He came to know about the said fact after filing of written statement by the other party. Now he

intending to implead the proposed defendant No.9 for proper adjudication of the matter and if the present application is not allowed the plaintiff will be put to lot of hardship and injury. Hence, prays to allow the application.

3. After service of the notice the proposed defendant No.9 did not appear before the court.

4. Heard the arguments from counsel for plaintiff.

5. The points that would arise for my consideration is as follows:-

1. Whether the IA.No.II filed by the plaintiffs U/o 1 Rule 10(2) R/w Sec.151 of CPC deserves to be allowed ?

2. What order ?

6. My answer to the above points are as follows :-

Point Nos.1 : In the **Affirmative.**

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

REASONS

7. **Point No.1** :- The plaintiff has filed the present suit against the defendants for the relief of Partition and Separate possession in respect of the suit schedule properties.

8. It is pertinent to note that, in the application the plaintiff has specifically stated that, the proposed defendant No.9 by name Yallamma is also daughter of Ramanna and sister of the father of the plaintiff. If the proposed defendant is not impleaded it will be difficult to decide the case. The proposed defendant has direct interest in the subject matter of the suit. The presence of the proposed defendant would be necessary to decide the controversies raised in the present suit. The plaintiff has filed this suit for the relief of partition and claiming right over the suit schedule property.

9. The provision of Order 1 Rule 10(2) of CPC, clearly conferred the power to the court to strike out the name of the party improperly joined whether as plaintiff or

defendant and also when the name of any person ought to have been joined as plaintiff or defendant or in a case where a person whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit. In the present case, the presence of the proposed defendant is necessary to the court for complete adjudication of the matter and settle all the questions involved in the suit. The proposed defendant inspite of service of notice not appeared before the court. If the application is not allowed it will cause irreparable loss to the plaintiffs and also it will create multiplicity of proceedings. The plaintiffs have made out genuine ground to allow the application. In the touch stone of aforesaid discussion, I answer **Point No.1 in the Affirmative.**

10. Point No.2 :- For the reasons stated above, I proceed to pass following;

ORDER

The I.A. No.II filed by the plaintiff under order 1 Rule 10(2) R/w Sec.151 of C.P.C. is hereby allowed.

The plaintiff is permitted to implead the proposed defendant No.9.

To carry out amendment and to furnish amended plaint.

Issue suit summons to the proposed defendant No.9 if steps taken.

Call on. 13.03.2024

Sd/-

(Smt. Amrin Sultana)
I Addl. Civil Judge and
JMFC., Kadur.