



**IN THE COURT OF THE I ADDL. CIVIL JUDGE & JMFC.,
AT KADUR.**

Dated on this 7th day of December, 2023.

PRESENT:

Sri. Amrin Sultana. B.A.L. LL.B.,
I Addl. Civil Judge & JMFC.,
Kadur.

O.S. No.574/21

- PLAINTIFFS** : 1. Sri. Vanajakshamma,
D/o Late. Mallappa W/o Rameshappa,
Aged about 60 years, Housewife,
R/o G. Yaradakere Village,
Yagati Hobli, Kadur Taluk,
Chikmagalore District.
2. Smt. Lokamma D/o Late. Mallappa,
W/o Mallappa, Aged about 51 years,
House wife,
R/o Y. Mallapura Village,
Yagati Hobli, Kadur Taluk,
Chikmagalore District.
3. Smt. Shivamma D/o Late. Mallappa,
W/o Shekarappa,
Aged about 37 years, House wife,
R/o Kurubagere Village,
Kasaba Hobli, Kadur Taluk,
Chikkamagalur District.



V/s

- DEFENDANTS :** 1. Smt. Eramallappa,
Late. Mallappa,
Aged about 50 years, Agriculturist,
R/o Salapura Village,
Banavara Post, Banavara Hobli,
Arasikere Taluk, Hassan District.
2. Sri. Santhosha S/o Eramallappa,
Aged about 25 years, Agriculturist,
R/o P. Kodihalli Village, Garje Post,
Yagati Hobli, Kadur Taluk,
Chikmagalur District.

IA No-VI

Applicants/ Plaintiffs : 1. Sri. Vanajakshamma and others

V/s

Opponent/ Defendants : 1. Sri. Eramallappa and Another

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1.	Provision under which the application is filed.	1 Rule 10(2) R/w Sec.151 of CPC
2.	Relief sought for	Partition
3.	The date on which the application is filed	20.06.2023



4.	Number of applications	I.A.No.VI
5.	The date on which the objections are filed by different opponents	19.09.2023
6.	The date of order	07.12.2023.

ORDERS ON IA No.VI

The plaintiffs have filed an application U/O I Rule 10(2) R/w Sec.151 of CPC, for impleading the proposed defendants as defendant No.3 and 4 in the ends of Justice and equity.

2. In the affidavit accompanying to the application, the plaintiff has stated that, they have filed the suit against the defendants for the relief of Partition and Separate Possession and such other relief in respect of the suit schedule properties. The suit schedule properties are the joint family properties of plaintiffs and defendants no.1 and 2. After the institution of this suit and by suppressing material facts the defenant No.1 and 2 have sold the item No.1 and 3 properties to the proposed defendant No. 3 and 4. the defendant No.1 and 2 have no exclusive right over the



suit schedule property as such the sale is illegal. In order to proper adjudication of the matter in dispute the proposed defendant is proper and necessary party to this case. If the application is allowed no prejudice or hardship would be caused to the proposed defendant and on the other hand irreparable loss would be caused to the plaintiffs if not allowed. Hence, prays to allow the application.

3. After service of the notice the proposed defendants has appeared before the court through her counsel and file objection to the application by contending that, the proposed defendant No. 3 and 4 have purchased suit schedule properties through a registered sale deed 30.12.2022 and 03.2.2023 respectively from the defendant No. 2 after the purchase the proposed defendant No.3 and 4 have become absolute owner of the suit schedule properties. Neither the plaintiff nor the defendant have any right over the properties purchased the proposed defendant, Hence prayed to dismiss the Application.

4. Heard the arguments from both side.



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

1. Whether the IA.No.VI 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 plaintiffs have 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 plaintiffs have specifically stated that, after institution of the



suit the defendants No. 1 and 2 have sold the properties to the proposed defendants which is joint family property. The defendants in order to deprive the legitimate share of the plaintiffs they have fraudulently executed the sale deed in favour of the proposed defendant. Based on the said fraudulent sale deed the proposed defendant got the revenue entries. The defendants have sold the property and title and possession of the said property has been transferred to the proposed defendants. The proposed defendants 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 proposed defendant has purchased the property belongs to the plaintiffs family. The plaintiffs have filed this suit for the relief of partition and claiming right over the property purchased by the proposed defendant.

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 effectually and completely to adjudicate upon and settle all the questions involved in the suit. The proposed defendant appeared before the court and filed objections. In the objections it is contended that, the defendant have got the right over the properties by virtue of the compromise agreement entered in OS No.276/2021, the defense of the proposed defendant has to be considered only at full fledged trial. 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.VI filed by the plaintiffs under order 1 Rule 10(2) R/w Sec.151 of C.P.C. is hereby allowed.

The plaintiffs are permitted to implead the proposed defendant as a defendants No.3 and 4.

[Dictated to the stenographer directly on computer, typed by her, corrected and then pronounced by me in the open court on this day of 7th day of December 2023]

Sd/-

(Smt. Amrin Sultana)

I Addl. Civil Judge and JMFC.,
Kadur.