



IN THE COURT OF THE SENIOR CIVIL JUDGE AND JMFC

AT MUDIGERE

: PRESENT :

**SRI. JAYAPRAKASH V. B.A., LL.B.,
SENIOR CIVIL JUDGE & JMFC,
MUDIGERE.**

O.S. 43/2019

DATED THIS THE 3rd DAY OF JANUARY 2023

PLAINTIFF : Sri. K.P.Purushothama Prabhu
S/o Late K.P.Narasimha Prabhu,
Aged about 62 years, Agriculturist,
R/o Kalasa Post and Hobli,
Mudigere Taluk.
[By Sri G.B. Venkatesh, Advocate]

V/s.

DEFENDANT: Sri. Deju Poojari S/o Late Rukku
Poojari, Aged about 76 yers,
R/o Kalasa Post and Hobli,
Mudigere Taluk.
[By Sri K.S.Adithya, Advocate]

PARTIES IN I.A.No.VI

Applicant: K.P.Purushothama Prabhu -Plaintiff

V/s

OPPONENT: Deju Poojari -Defendant



ORDER ON I.A.NO.VI

The plaintiff has filed IA No.VI, under order 1 rule 10(2) of CPC to implead proposed defendants in the suit.

2. The said application is supported by an affidavit sworn by applicant.

3. On the other hand the the defendant and the proposed defendants filed objection to the IA No. VI and prays to dismiss the application.

4. Heard on IA No. VI by both side. Perused the materials on record.

5. Now the point that arises for my considerations are:

(1) Whether the plaintiff has made out grounds to allow the application filed under order 1 Rule 10(2) of CPC?

(2) What order?



6. My findings to the above points is as follows:

Point No.1: Partly in the Affirmative

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

REASONS

POINT NO.1:

7. The plaintiff has filed suit for declaration that, the plaintiff is the absolute owner of the suit schedule property and for possession of the suit schedule property. The present application is filed by the plaintiff to implead the proposed defendant in the suit. In the affidavit plaintiff contended that after filing the suit defendant No.1 and proposed defendant No.2 to 4 partitioned suit schedule property and the said partitioned deed is registered before Sub-registrar, Mudigere under S.R. No. 1061/2020-21 dated 04/09/2020. Proposed defendant No.5 changed the katha of the suit schedule property to the name of defendant No.1 and at the time of changing of the katha not issued any notice to the plaintiff. The



defendant No.5 colluded with defendant No.1 changed the katha of the suit schedule property in the name of defendant No.1. Hence, the plaintiff prayed to allow the application.

8. On the other hand the defendant / proposed defendants have filed objection to IA No. VI. In the objection the defendant / proposed defendants contended that the application is intended to harass the defendant and his children. The defendants have obtained the plaint schedule properties under Karnataka Land Reforms Act [Tenancy Act] and he is the absolute owner of the same. The defendant being owner of the same has partitioned the same among his children. The plaintiff has no right to question the said partition. The plaintiff has raised unnecessary objection before the Tahasildar, Mudigere about the transfer of khata to the name of children of defendant. The said objection was over ruled. Hence aggrieved by the same the plaintiff has filed the application. The suit filed by the plaintiff itself is frivolous. He has not



produced the alleged copy of order of Land Tribunal wherein the grant of land in favour of defendant is alleged to be lessened. The suit against the defendant is not maintainable so also the application for impleading children of defendant is also not maintainable. Hence, the the proposed defendant prayed to dismiss the application.

9. The proposed defendant No.5 has filed detailed objection to the I.A. No. VI by denying all the allegations made in the application. The defendant No.5 contended that as per the partition deed dated 04/09/2020 registered as document No. 1061/2020-21 the J Form has been issued from the Sub-registrar, Mudigere in the Bhumi Web Site and by receipt of the said registered document for change of katha notice has been issued by the Revenue Inspector, Kalasa Hobli to file any objection for change of katha as per the partition deed. Since no objection has been received from any one within the prescribed time on the basis of the registered partition deed as per law the katha has



been changed in the name of respective parties. The proposed defendant No.5 further stated that as per Section 128 of Karnataka Land Revenue Act 1964 if any property is transferred through a registered document it is the duty of the revenue officials to mutate the katha in accordance with law. The proposed defendant No.5 has changed the katha on the basis of the partition deed and he has discharged his official duty. As per Section 135 of Karnataka Land Revenue Act 1964 the Thasildar cannot be impleaded as party in the suit. Hence, the proposed defendant No.5 prays to dismiss the application.

10. On perusal of the record it reveals that the plaintiff filed the suit for declaration and possession of suit schedule property. The application reveals that as per the partition deed dated 4/9/2020 the suit schedule property has been partitioned and the katha has been changed in the name of proposed defendant No.2 to 4. Since the suit



is for declaration and possession of the suit schedule property. The proposed defendants are the necessary parties to the suit. In order to adjudicate the matter and determine the rights of the parties the proposed defendants No.2 to 4 are very much necessary party to the suit. Since the proposed defendant No.5 being the Tahasildar has changed the katha on the basis of registered document and he has acted upon his official capacity. Hence, he is not necessary party to decide the matter in controversy. Since during the pendency of the suit the defendant No.1 has partition the suit schedule property with proposed defendant No.2 to 4 they are very much necessary to adjudicate the matter in dispute. Hence the proposed defendant No.2 to 4 are very much necessary to enable the court effectively and completely to



adjudicate the matter in dispute. If the application is allowed no hardship will be caused to the defendant No.1 to 4. Hence, I proceed to pass the following:

ORDER

IA No.VI filed by the plaintiff to implead proposed defendants is partly allowed.

The proposed defendant No.2 to 4 are order to be impleaded in the suit.

As against proposed defendant No.5 the IA No. VI is rejected.

The plaintiff is directed to amend the plaint and to furnish amended plaint.

(Dictated to the stenographer directly on computed, typed by her, corrected by me and pronounced in open court on this the 5th day of January, 2023)

**(JAYAPRAKASH V.)
SENIOR CIVIL JUDGE AND JMFC.,**

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