

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

PRESENT : SRI VAIDYA SHREEKANT, *B.Sc, LL.B.*
*Senior Civil Judge & Prl. J.M.F.C.,
Tarikere. .*

(Name of the Presiding Judge)

DATED : THE 18th DAY OF MARCH 2025

OS No.156/2019

ORDER ON IA NO.XII

The present application has been filed by 3rd party applicant namely Karthik S/o Harish K.P. under order 1 Rule 10 of CPC praying to implead him as party to the proceedings particularly as defendant No.5.

2. The submission of the applicant is that, the defendant No.1 herein namely Basamma is his great grandmother. She has taken her last breath on 15.09.2024. When he had been distribute death ceremony cards, one Pradeep Sharm who happens to be a deed writer handed over a cover to him and stated that as per the instructions of the defendant No.1, he has been handing over the cover to him. He showed the cover to his counsel and came to know that his great grandfather bequeathed her share in his favour. Hence, it is just and necessary to allow the

application and permit him to come on record as defendant No.5.

3. The application is objected by plaintiff. The plaintiff contended that the present application is filed only to drag on the proceedings, it is not maintainable either in law or on facts. The applicant has no right to file this application on the basis of will. If at all, he has any right based on the will, he has to seek probate. The present suit is for partition and separate possession. The Will relied upon by the applicant shows that he is entitled to the share that would be allotted to the defendant No.1. The share of the defendant No.1 is not yet ascertained. Hence, application is fit to be rejected.

4. Heard the arguments on both sides.

5. The following points arise for my consideration:

1. Whether the 3rd party applicant proves that he is necessary party to the suit?
2. What order?

6. My answers to the above points are hereunder:

Point No.1: In the Affirmative

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

REASONS

7. **POINT No.1:** Admittedly, it is the suit for partition and separate possession which has been filed by the plaintiff alleging that the suit schedule properties are joint family properties of herself and defendants. Admittedly, the defendant No.1 was reported dead and it is stated that her LRs are already on record. Accordingly, amendment was also carried out.

8. The 3rd party applicant herein is claiming that deceased defendant No.1 executed Will Deed in his favour bequeathing her share that to be allotted in the suit in his favour. The 3rd party applicant filed original Will which was registered before Sub-Registrar, Tarikere on 12.02.2021. In the Will Deed, it has been clearly mentioned that the properties that would be allotted to the share of deceased defendant No.1 shall go to the applicant herein who happens to be the great grandson of the deceased.

9. The only objection of the plaintiff is that if at all any Will Deed is executed, the applicant shall seek probate. It is pertinent to note here that the probate shall be obtained by the executor and not by beneficiary under a Will. Hence, I am of the opinion that the contention of the plaintiff holds no water. As discussed above, the applicant herein is intending to come on record in a suit for partition and separate possession through a registered Will Deed, in which there is a clear reference that the share of deceased

defendant No.1 shall be allotted to the applicant herein. Hence, I am of the opinion that the applicant is necessary party to the suit. Accordingly, I answer point No.1 in Affirmative.

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

ORDER

The application filed by the 3rd party applicant under Order I Rule 10 of CPC at IA No.XII is allowed.

The plaintiff is directed to implead the 3rd party applicant as defendant No.5 in the instant suit.

To carryout amendment and to furnish amended plaint.

SD/-
SENIOR CIVIL JUDGE & PRL. JMFC.,
TARIKERE.