

**IN THE COURT OF THE CIVIL JUDGE AND ADDITIONAL  
J.M.F.C., AT TARIKERE**

**Present** : SMT.PAVITHRA.M.D, B.A., LL.B.,  
Civil Judge & Addl. JMFC. Tarikere.

**C.Mis.No.4/2013**

**Dated this 13<sup>th</sup> day of November 2019**

**ORDERS ON I.A.No.8**

The petitioner No.1(a) has filed this application U/Or.1 Rule 10(2) R/w Sec.151 of CPC to bring the application schedule persons as respondent No.10 to 14 to adjudicate the matter effectively.

2. It is averred in the affidavit annexed to the application that, on verification of the revenue record, he came to know that, one Puttaswamy and Thippeswamy have got changed the khatha of the agricultural lands into their name from the name of T.H.Shanthappa and without the knowledge of the petitioner. The said Puttaswamy and Thippeswamy have not right, title and interest or possession over the properties of T.H.Shanthappa. The said T.H.Shanthappa was bed ridden since 2005 and he is unable to walk and even to talk. Taking advantage of the ill health of T.H.Shanthappa, the above said Puttaswamy and Thippeswamy have got changed the khatha of agricultural lands into their names on the basis of alleged gift deed. The said fact came to his knowledge on 27.07.2016 when the above said Puttaswamy published the said fact in Kannada Prabha Daily Newspaper. Thereafter, the petitioner and his mother and brothers gave a paper publication on 10.08.2016 in Kannada Prabha Daily Newspaper not to purchase the

agricultural lands and the site properties of T.H.Shanthappa from the above said Puttaswamy and Thippeswamy. In spite of that, proposed respondent No.10 to 13 have sold house and site property to proposed respondent No.14. Hence, the application schedule persons are necessary parties to the present petition. Hence, this application.

3. The proposed respondents have entered their appearance through their counsel and filed their written statement. They resisted the application by filing their objection statement wherein they stated that, The petitioner intends to bring some of the legal heirs of deceased T.H.Shanthappa through another means which cannot be allowed. The petitioner has sought for past mesne profits in respect of petition schedule properties which are the subject matter of suit in OS.No.156/1989. As per the decree, the land in Sy.No.139 of Shivani village is the property of deceased T.H.Shanthappa. Proposed respondent No.11 is the wife of proposed respondent No.10 and she is neither necessary nor proper party. The property sold in favour of proposed respondent No.13 is not the subject matter of this petition. Hence, there is no question to implead as her respondent. Further, the affidavit is silent with respect to whether the property sold in favour of respondent No.13 is a subject matter of the proceedings. The petitioners also filed a suit for partition and separate possession before the Hon'ble Senior Civil Judge at Tarikere in OS.No.134/2019. Hence, they prayed to reject the application with exemplary cost.

4. On going through IA.No.8 and the objection statement, the points which arise for consideration of this Court are as follows:-

- 1) Whether the proposed respondents are necessary or proper parties to the present petition?
- 2) What order?

5. The findings on the above points are as follows:-

Point No.1 : In the Negative.

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

### **REASONS**

6. **Point No.1**: The petitioner has filed this petition U/Or.20 Rule 12 R/w Sec.151 of CPC to direct respondent No.1 to 7 to pay the mesne profits from 30.04.1984 to 16.02.2004 as per the judgment and decree passed in OS.No.156/1989. The petitioner's brother T.S.Ramesha has filed a suit in OS.No.156/1989 on the file of this Court for partition and separate possession and also for mesne profits. The said suit came to be decreed on 30.07.1990 declaring that, the petitioner is entitled for 1/6th share in 'A' and 'B' schedule properties and 1/7th share in item No.14 of 'B' schedule property and also ordered for mesne profits in item No.14 of 'B' schedule property and also 'D' schedule properties. The judgment and decree passed in OS.No.156/1989 is also confirmed in RA.No.62/1990 on the file of Hon'ble Senior Civil Judge at Tarikere. The judgment and decree passed in RA.No.62/1990 also confirmed in RSA.No.536/1993 on the file of Hon'ble High Court of Karnataka. The petitioner's brother T.S.Ramesha has filed a

petition for final decree in FDP.No.3/1995 against the petitioner herein and other respondents. As per the preliminary decree and the final decree, the petitioner has obtained the possession of his share in the year 2004 as per the preliminary decree passed in OS.No.156/1989. Since, the respondents have not paid the mesne profits as per the preliminary decree, the petitioner is before this Court seeking mesne profits from the hands of respondent No.1 to 6.

7. When the case is set-down to bring the LR's of deceased respondent No.6, the petitioner came up with the present application to implead the application schedule persons as respondent No.10 to 14 on the ground that, without his knowledge, one Puttaswamy and Thippeswamy have got mutated the khatha of house and site properties into their name on the strength of the alleged gift deed executed by deceased T.H.Shanthappa and respondent No.10 to 13 have sold house and site properties in favour of respondent No.14. Per-contra, the proposed respondents have resisted the application contending that, the petitioner has sought for determination of past mesne profits in respect of petition schedule properties.

8. With this background I have perused the materials available on record. The petitioner has filed this petition to direct respondent No.1 to 7 to pay mesne profits from 30.04.1984 to 16.02.2004. It is not the case of the petitioner that, the proposed respondents are in possession of the suit schedule properties in the above said period. More so, as per preliminary decree passed in OS.No.156/1989, the petitioner is entitled for mesne profits in respect of 'D' schedule and

item No.14 of 'B' schedule property. The proposed respondents are not parties in OS.No.156/1989 and there is no decree against the proposed respondents. Furthermore, the petitioner nowhere stated that, the alleged gift deed and the sale transaction between respondent No.10 to 13 and 14 is with respect to the property which fell to the share of the petitioner. Further, the petitioner has not filed any iota of documents in support of his claim. Such being the facts and circumstances of the case, this Court is of the opinion that, the proposed respondents are neither necessary nor proper parties to the present petition. Accordingly, I answer point No.1 in the Negative.

**9. Point No.2:** In view of the discussion and conclusion arrived at point No.1, I proceed to pass the following:

**ORDER**

IA.No.8 filed under Order 1 Rule 10(2) R/w  
Sec.151 of C.P.C is hereby rejected.

No order as to cost.

Sd/-

**(PAVITHRA.M.D )  
CIVIL JUDGE AND  
ADDL.J.M.F.C., TARIKERE.**