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IN THE COURT OF PRL. CIVIL JUDGE AND J.M.F.C, TARIKERE

**PRESENT: Sri. Rahul Shettigar, B.Com (Hons.), LL.B
Prl. Civil Judge & J.M.F.C, Tarikere**

DATED THIS THE 17th DAY OF DECEMBER, 2025

ORIGINAL SUIT No. 305/2016

BETWEEN:

Sri. Nandini.T.H

PLAINTIFF

-AND-

Sri. B. Harish and others

DEFENDANTS

IN I.A.NO.XV

1. Kum. Lavanya.H

APPLICANTS/ PROPOSED

2. Smt. Sudha

DEFENDANTS No.4 & 5

-AND-

Sri. Harish and others

OPPONENTS/ DEFENDANTS

PARTICULARS

i	<i>Provision under which the application is filed</i>	<i>Under Order I Rule 10(2) R/w. Section 151 of CPC</i>
ii	<i>Relief sought for</i>	<i>To permit the Applicants to come on record as D-4 and 5 in the suit</i>
iii	<i>The date on which the application is filed</i>	<i>19.03.2023</i>
iv	<i>Number of the application</i>	<i>I.A.No.XV</i>
v	<i>The date on which the objections are filed by different opponents</i>	<i>30.09.2023</i>
vi	<i>The date on which the orders were passed on the said application</i>	<i>17.12.2025</i>

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**ORDERS ON I.A. NO. XV**

1. Applicants have filed the instant application under Order I Rule 10(2) r/w. Section 151 of C.P.C with the prayer to permit them to come on record as Defendant No.4 and 5 in the present suit.
2. In the affidavit appended to the application, the Applicant/ Proposed Defendant No.5 has contended that the marriage of Applicant No.2 was solemnized with Defendant No.1 and out of the said wedlock Applicant No.1 was born on 05.09.2012, who is studying in 6th standard at BGS Central School. The mother of the Plaintiff viz., Bhavya had lodged a complaint against Applicant No.2, Defendant No.1 and others before Tarikere police alleging that Defendant No.1 was living with Applicant No.2 and leveled allegations U/s. 323, 504, 498A and 506 of IPC and Tarikere police have filed charge sheet against Applicant No.2 and Defendant No.1 and others, which is now registered and pending as C.C.No.46/2017. The Defendant No.1 has expired on 07.02.2023 leaving behind the Applicants as his legal heirs and they are also entitled a share in respect of the property, which belongs to Defendant No.1. Hence, the Applicants are become

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necessary parties in the present suit. Accordingly, a prayer has been made to allow the application.

3. Resisting the application, the Plaintiff has filed detailed objections contending that the application is not maintainable either in law or on facts and liable to be dismissed. The Applicants are neither the members of joint family and would not become necessary or proper party in the present suit. The Applicants are neither the wife nor the daughter of deceased Defendant No.1. No marriage took place between Applicant No.2 and Defendant No.1 and they are not related to the family of the parties to the suit. Even the charge sheet contents in C.C.No.46/2017 would not indicate anything of such matrimonial relationship between them. There is no proper narration of date and place of such marriage. The Applicant No.2 has admitted in C.C.No.46/2017 that there is no relationship with Defendant No.1. In such circumstances, the application has been filed in collusion with other Defendants with protract the proceedings. Accordingly, the Plaintiff pray that the application be dismissed.

4. Heard both sides.

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5. Learned Counsel for Applicants has produced list along with following documents, in support of the contentions –

- a. Certified copy of Complaint given by Plaintiff*
- b. Birth Certificate of Kum. Lavanya*
- c. Ration card of Harisha*
- d. Aadhaar card of Kum. Lavanya*

6. Having heard the rival contentions and on perusal of the materials, the points that would now arise for my consideration are as under -

Point No.1 : Whether the Applicants/ Proposed Defendant No.4 and 5 have made out sufficient grounds to allow the application?

Point No.2 : What Order?

7. Now, my findings on above points are as follows -

Point No.1 : In the Affirmative

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

REASONS

8. **Point No.1:** The instant suit is filed mainly seeking the relief of partition and separate possession. The suit is at the stage of cross-examination of DW-1 & 2. At this juncture, the Applicants have come up before the Court with the instant application with

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the prayer to permit them to come on record as additional Defendants in the suit.

9. Before advertng to the factual matrix any further, it would be beneficial to reproduce the provision of Rule 10(2) of Order I of C.P.C., which reads thus –

10(2) - Court may strike out or add parties.—*The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or 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, be added.*

10. A plain reading of the provision would indicate that the Court at any stage of the proceedings can strike out or add parties who ought to have been joined, whether as a Plaintiff or Defendant or whose presence before the Court may be necessary in order to enable the Court effectually and completely adjudicate upon and settle all the questions involved in the suit.
11. The unique position of a Plaintiff in the suit being its *Dominus Litus* requires due notice. *Dominus Litus* is the person to whom the suit belongs to and he alone is the master of the suit. The

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Doctrine of *Dominus Litus* acts as a general rule with regards to impleadement of parties to the suit and the Plaintiff cannot be compelled to fight against someone whom he does not wish to fight and against whom he does not claim any relief. Order I Rule 10(2) of CPC acts as an exception to this general rule. It is within the discretion of the Court to add or strike-out someone though against the wishes of the Plaintiff if such party establishes himself to be a proper or necessary party to the suit. The object of provisions of Order I Rule 10(2) appears to be to bring on record all persons who are parties to the subject matter of the suit so that the dispute can be determined in their presence without any protraction, inconvenience and to avoid multiplicity of proceedings.

- 12.** It is well settled by catena of judgments of the Hon'ble Supreme Court of India that a necessary party is one without whom no order can be made effectively and a proper party is one in whose absence an effective order can be made but whose presence is necessary for complete and final decision on the question involved in the proceedings. Hence, the application on hand lies in the narrow compass so as to examine whether the proposed

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Plaintiffs establish themselves as either proper or necessary parties to the instant suit.

- 13.** The records of the case indicate that the present suit has been instituted by the Plaintiff seeking the relief of partition and separate possession in respect of ancestral and joint family properties. The Applicants contend that Proposed Defendant No.4, being born out of the alleged marriage between Defendant No.1 and Proposed Defendant No.5, would be entitled to claim a share through deceased Defendant No.1 and, therefore, ought to be impleaded as a necessary party to the present proceedings.
- 14.** Though the application is completely silent as to the date of the alleged marriage between deceased Defendant No.1 and Proposed Defendant No.5, the documents produced by the Applicants, particularly the complaint lodged by the mother of the Plaintiff against deceased Defendant No.1 and Proposed Defendant No.5, indicate that the alleged marriage between them would amount to a second marriage of deceased Defendant No.1. The other documents being the birth certificate, ration card and Aadhaar card all reveal that Applicants were related to the deceased Defendant No.1. Hence, at this stage, it appears that

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Proposed Defendant No.4 might be a child born out of such alleged second marriage.

- 15.** Section 16 of the Hindu Marriage Act legitimizes children born out of void marriages and though such children are not entitled to claim a share in ancestral or joint family properties, their right of succession is confined to the self-acquired property of the parents under Section 8 of the Hindu Succession Act and not under Section 6 thereof. In the present case, since the Defendant No.1 has expired, the Applicants can certainly claim through him and have approached at the Court at the right point in time making them necessary parties to the suit. With these observations, I answer the **Point No.1** in the **Affirmative**.

- 16. Point No.2:** For the foregoing reasons, the following -

ORDER

I.A No.XV filed by the Applicants/ Proposed Defendant No.4 and 5 under Order I Rule 10 r/w Section 151 of C.P.C is hereby allowed.

Resultantly, Applicants are permitted to come on record as Defendant No.4 & 5 in the suit.

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Plaintiff shall carryout the amendment and furnish the amended plaint on the next date of hearing without fail.

(Dictated to Stenographer, after transcription, print out corrected and then pronounced by me in the Open Court on this the 17th of DECEMBER, 2025)

sd/-
(Rahul Shettigar)
Prl. Civil Judge & J.M.F.C,
Tarikere.