

KACM710002842020



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

Present: Sri Shivakumar.R. B.A. LL.B.,
Addl. Civil Judge & JMFC, Tarikere.

Dated: 28th Day of March 2023

ORIGINAL SUIT NO.50/2020

PLAINTIFF/s :

Jayanna S/o late Ramalingappa, aged
73 years, Agriculturist, R/o
Bhoothanahalli village, Ajjampura Hobli,
Ajjampura Taluk.

(Reptd. By : Sri K.S.H., Advocate.)

Vs.

DEFENDANT/s:

Ramalingappa S/o late Kariyappa, aged
50 years, Agriculturist, R/o
Bhoothanahalli village, Ajjampura Hobli,
Ajjampura Taluk.

(Reptd. By : Sri K.L.R., Advocate.)

PARTIES TO I.A.NO.III

Applicant/s :

Maheshwarappa S/o Mallappa @ Patel
Mallappa, aged 70 years, R/o Ballekere

KACM710002842020



Vilalge, Kasaba Hobli, Hosadurga Taluk,
Chitradurga District.

(Reptd. By : Sri V.G., Advocate)

Vs.

Opponent/s : Jayanna

ORDER ON I.A.NO.III

The present I.A., is filed when the matter is set down for orders of I.A.No.I filed under Order 39 Rule 1 and 2 of CPC.

2. The applicant has filed the instant I.A., under Order I Rule 10(2) r/w Section 151 of CPC with prayer be pleased to implead him as defendant No.2 in the above matter.

3. The I.A., is annexed with the affidavit of applicant. It is stated in the affidavit that the plaintiff has filed this suit for declaration of title and permanent injunction against the defendant. The plaintiff has contended in his plaint that the property has been purchased by one Kariyappa. The revenue documents in respect of land bearing Sy.No.1/1 and 1/2 of Bhoothanahalli village still stands in the name of Ramalingappa S/o Kariyappa. It is further stated that the grandfather of the applicant namely Ramappa and

KACM710002842020



grandfather of the defendant namely Veerabhadrappa are the blood brothers, they have partitioned the properties in between them amicably, after partition they are in separate possession and enjoyment of the properties allotted to their shares respectively. The grandfather of the applicant and grandfather of defendant were died long back.

4. It is further stated that after death of prepositors, their successors are continued in possession of the respective properties, the father of the applicant after his marriage came to his father in-laws house at Ballekere and stayed there. Thereafter brother of his father look after the properties by sharing crops annually, the same is received by the applicant once in a year. When the father of the applicant is stayed at Ballekere, the revenue documents of the properties stands in the name of Kariyappa. The said Kariyappa mis-led the plaintiff and sold the properties of the applicant's father's share also. The seller has no independent right to sell the share of the applicant's father. The plaintiff is also resident of same village. He is well acquainted with the rights of the applicant's father in respect of suit schedule property. The plaintiff colluded with the said Kariyappa and got collusive

KACM710002842020



document in the style of sale deed, the said sale deed does not clinches of right of the applicant's father.

5. It is further stated that his father was died 10 years back, even after death of his father, the defendant sent the share in the crop annually without fail. It is further stated that behind back of the applicant the Kariyappa has changed the khata in his name. After death of Kariyappa the defendant obtained the khata in his name by way of inheritance. The plaintiff has filed this suit without making the applicant as a party to the said suit. Hence, the applicant is the necessary party to the above suit. Hence, this I.A.

6. The I.A., copy of served to the other side. The counsel for the plaintiff filed the detailed objections and resisted the I.A., filed by the applicant and inter alia contended that the impleading applicant is no way concerned to the suit schedule property, the defendant colluded with the impleading applicant and filed this frivolous I.A. The reasons assigned in the supportive affidavit of the I.A., are all false. Therefore, the application filed by the applicant is not tenable. For all these grounds, the plaintiff prays for to reject the I.A., filed by the applicant with cost.

KACM710002842020



7. Heard arguments of both side.

8. On perusal of the materials placed on record, the following points that would arise for my consideration are :

- 1) Whether the I.A.No.III filed by the applicant under Order I Rule 10(2) r/w Section 151 of CPC is deserves to be allowed?
- 2) What order?

9. My findings on the above points are as follows :

Point No.1 : In the Negative,

Point No.2 : As per the Order,

for the following:

REASONS

10. **POINT NO.1** : On perusal of the materials available on record, admittedly the plaintiff has filed present suit against the defendant for the relief of declaration and permanent injunction in respect of suit schedule property. When the matter is set down for order on I.A.No.I filed under Order 39 Rule 1 and 2 of CPC, the applicant has moved this I.A., and sought for to permit him to implead him as defendants No.2 in the above matter, on the ground that the grandfather of the defendant and grandfather of the applicant

KACM710002842020



are blood brothers, they had partitioned their family properties amicably and they were put in possession of their respective shares, the grandfather of the applicant was died long ago, thereafter the father of the applicant was in possession of the same, after marriage the father of the plaintiff went to in-law's house and stayed at Ballekere village. Moreover the defendant has given the shares in the crops annually and the same is received by the father of the applicant, the father of the applicant was also died about 10 years back and thereafter also, the defendant was giving shares in the crops to the applicant once in a year. The father of the defendant alone has no right to sold the suit schedule property in favour of father of the plaintiff through the alleged sale deed. Therefore, the impleading applicant is also necessary party to the above suit. At this stage, to substantiate the contention of the applicant, he has produced the notarized copy of the genealogical tree, RTC extract for the year 2021-22, certified copy of records of rights, index of lands, survey tippani in respect of suit schedule property and also produced the xerox copy of the adhaar card of the applicant.

KACM710002842020



11. On the other hand, the plaintiff has contended that the impleading applicant has not interest over the suit schedule property, the impleading applicant and defendant have colluded with each other and filed this frivolous I.A. Hence, the I.A., filed by the impleading applicant is not tenable in the eye of law.

12. On perusal of the material available on record, admittedly the plaintiff has filed this suit against the defendant for the relief of declaration to declare that the plaintiff is the absolute owner of the suit schedule property by virtue of the registered sale deed dated 16.12.1974 and also for the relief of permanent injunction in respect of suit schedule property. The main contention of the applicant is that, the grandfather of the applicant and grandfather of the defendant are blood brothers and they have partitioned their family properties and they are put in separate possession of their respective shares. The father of the defendant alone has no right to sold the suit schedule property in favour of plaintiff in respect of suit schedule property. It is very pertinent to note that, the impleading applicant has not produced any iota of document to show that he has interest

KACM710002842020



with respect to the property in dispute i.e., subject matter of the present suit. In the absence of the applicant, the court can draw the effective decree. The presence of the applicant in the above matter is not necessary and he is not the necessary party to the suit. In the instant suit, the cause of action does not arose against the applicant. If the rights of the applicant is impugned, he may approach to the proper forum for the proper relief, but not in the present suit. By considering all these reasons, I answer Point No.1 in the Negative.

13. **POINT NO.2** : In view of my findings on Point No.1, I proceed to pass the following :

ORDER

I.A.No.III filed by the applicant under
Order I Rule 10(2) r/w Section 151 of CPC is
hereby rejected on cost of Rs.200/-.

(Dictated to the Stenographer on computer, typed by her, corrected by me and then pronounced in the open Court, on this the day of 28th day of March 2023.)

sd/-
(SHIVAKUMAR.R)
ADDL.CIVIL JUDGE &
J.M.F.C., TARIKERE.