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

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

Dated: 14th Day of July 2022

ORIGINAL SUIT NO.234/2015

PLAINTIFF/s :

R.Govindappa S/o Rangappa, aged 67 years, Agriculturist, R/o Bettadahalli Village, Kasab Hobli, Tarikere Taluk, Chikkamagaluru District.

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

Vs.

DEFENDANT/s:

Sunandamma W/o Malleshappa, D/o Bheemappa, aged 47 years, Housewife, R/o Behind Maggadmane, K.E.B.Road, Police Ningappa Layout, Tarikere Town and Post, Tarikere Taluk, Chikkamagaluru District.

(Reptd. By : Sri T.N.M., Advocate.)

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**PARTIES TO I.A.NO.IX**

Applicant/s : Naveen S/o Malleshappa, aged 39 years,
Agriculturist and Electrician, R/o Behind
Maggadamane, K.E.B.Road, Tarikere Town
Tarikere Taluk
(Reptd. By : Sri B.N.K., Advocate)

Vs.

Opponent/s : R.Govindappa

ORDER ON I.A.NO.IX

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 the applicant as defendant No.2.

2. The I.A., is annexed with the affidavit of applicant. It is stated in the affidavit that he is the son of present defendant Sunandamma and his father Malleshappa was died leaving the properties behind him, but his mother and brother have not allotted the share of applicant in the said property. The applicant has filed suit for partition and other relief in O.S.No.320/2020, wherein the defendant in the said suit have not appeared and now the same is posted on 24.03.2022 for his evidence. The applicant has further stated that he has learnt that his mother is showing hostile attitude

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towards him since many years and at the instigation of his brother, his mother has filed suit for declaration in respect of the property in which he claimed share in O.S.No.320/2020. It is further stated that his mother in order to deprive him from his legal share, she has colluded with the present plaintiff and not taking active part in the present suit. Apart from it, with her neighbour she used to tell that "ನಾನು ಗೋವಿಂದಪ್ಪನ ಕೇಸಿನಲ್ಲಿ ಆತನ ಪರವಾಗಿ ತೀರ್ಪು ಬರುವಂತೆ ಮಾಡಿ ನನ್ನ ಜಾಗವನ್ನು ಆತನಿಗೆ ಕೊಟ್ಟಂತೆ ಮಾಡಿ ಆತನಿಂದ ದುಡ್ಡನ್ನು ಪಡೆದುಕೊಂಡು ಬಿಡುತ್ತೇನೆ, ಆಗ ನನ್ನ ಮಗ ನವೀನ ಅದು ಏನು ಮಾಡಿಕೊಳ್ಳುತ್ತಾನೋ ಮಾಡಿಕೊಳ್ಳಲಿ." If his mother i.e., defendant is succeeded in her attempt, then he being the son of deceased Malleshappa will lost his legal share in the present suit schedule property as said property was purchased from the income derived from the property which left by his father at Hosadurga Taluk. If the application is not allowed and if he is not impleaded as defendant No.2, he will be put to great hardship and inconvenience and there is likelihood of getting the judgment and decree behind his back. Hence, this application.

3. 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 interalia

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contended that the I.A., filed by the applicant is not maintainable either in law or on facts. It is false that the suit schedule property is belonged to the defendant. It is further contended that, suit schedule property is his self acquired property and he has purchased the same on 03.09.2010 from Savithramma W/o late K.H.Nirvanamma under sale deed and the plaintiff is paying tax to the said property, but the defendant is in possession of the said property and he has filed this suit to get possession of the suit property from the defendant. The defendant is in illegal possession of the suit property and the suit property is not belonged to the family of defendant and as such the defendant or family members of the defendant are not having any right, share and interest over the suit property. For all these grounds, the plaintiff prays for to reject the I.A., filed by the applicant with cost.

4. Heard arguments of both side.

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

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

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6. 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

7. **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 consequential relief of recovery of possession and injunction in respect of the suit schedule property. When the matter is set down for further evidence on plaintiff side, at this stage, the applicant have moved this I.A., and be pleased to implead him as defendant No.2 in the above matter. It is the urge of the applicant that the defendant is the mother of the applicant herein, she has colluded with the plaintiff and on the instigation of the defendant, the plaintiff has filed this suit in order to deprive his share in the suit schedule property. It is further urge of the applicant that his brother and mother have not allotted the share of the applicant in his family properties, therefore he has filed suit against the defendant herein and others for the relief of partition and

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separate possession, the same is numbered as O.S.No.320/2020, therefore the impleading applicant is also proper party to the above proceedings. Per contra, it is the urge of the plaintiff that the defendant is not the absolute owner of the suit schedule property and further urge of the plaintiff that he has purchased the suit schedule property through registered sale deed dated 03.09.2010 from one late Savithramma W/o late K.H.Nirvanamma, but the defendant has no manner of right, title and interest over the suit schedule property. Therefore, the applicant is not a proper party to the above matter.

8. On perusal of the material available on record, admittedly it is a suit for declaration and recovery of possession and injunction against the defendant in respect of the suit schedule property. When the matter is set down for further evidence of plaintiff's side, the impleading applicant has moved this I.A., to implead him as a proposed defendant in the above matter on the ground that he is the son of the defendant herein and he has also share in the suit schedule property. As per the plaint averments, the defendant has no any manner of right, title and interest over the suit schedule property, in the absence of the plaintiff taking advantage of

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the same, the defendant has illegally entered in the suit schedule property and constructed the house in the suit schedule property without any right over the suit schedule property. When such being the case, the plaintiff has filed this suit against the defendant only for the relief of declaration and recovery of possession against the defendant in respect of the suit schedule property. By considering the above facts, opinion of this court is that, if the applicant has any right over the suit schedule property, he has to get remedy in the original suit filed by him for the relief of partition and separate possession in O.S.No.320/2020. The present suit is for declaration and recovery of possession and hence, the impleading applicant is not neither proper nor necessary party to the suit and in the absence of impleading applicant, the above matter can be adjudicated effectively. Therefore, the impleading applicant has not made any valid grounds in the affidavit annexed to the I.A., to allow the present I.A., at this stage. By considering all these reasons, I answer Point No.1 in the Negative.

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

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**ORDER**

I.A.No.IX 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, transcribed by her, corrected by me and
then pronounced in the open Court, on this the day of 14th day of July
2022.)

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