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

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

DATED THIS THE 2nd DAY OF JUNE 2025

ORIGINAL SUIT No. 55/2023

BETWEEN:

Sri. Gurumurthy Aradhya and
others

PLAINTIFFS

-AND-

Sri. L.M. Manjunatha

DEFENDANT

IN I.A.NO.III

Sri. Rajashekharaiiah

**APPLICANT/ PROPOSED
DEFENDANT No.2**

-AND-

Sri. Gurumurthy Aradhya and
others

OPPONENTS/ PLAINTIFFS

PARTICULARS

<i>i</i>	<i>Provision under which the application is filed</i>	<i>Under Order I Rule 10(2) r/w Section 151 CPC</i>
<i>ii</i>	<i>Relief sought for</i>	<i>To implead Applicant as D.2 in the suit</i>
<i>iii</i>	<i>The date on which the application is filed</i>	<i>20.12.2024</i>
<i>iv</i>	<i>Number of the application</i>	<i>I.A.No.III</i>
<i>v</i>	<i>The date on which the objections are filed by different opponents</i>	<i>22.01.2025</i>
<i>vi</i>	<i>The date on which the orders were passed on the said application</i>	<i>02.06.2025</i>

KACM710005972023

**ORDERS ON I.A. NO. III**

1. Applicant/ Proposed Defendant No.2 has filed the instant application under Order I Rule 10(2) r/w Section 151 of C.P.C with the prayer to permit him to come on record as Defendant No.2 in the present suit.
2. In the affidavit appended to the application, the Applicant/ Proposed Defendant No. 2 has stated that the present suit is filed by the Plaintiffs, who are in possession of the alleged encroached portion described as the 'B' schedule property. One L.R. Prakash has filed a suit seeking partition and separate possession in O.S. No. 305/2022. In that suit, the Applicant/Proposed Defendant No. 2 is the 11th Defendant and has filed a written statement claiming his share in the suit schedule property, which includes the 'B' schedule property of the present suit, being joint family property. The Plaintiff is also listed as Defendant No. 19 in the said suit, indicating that he is fully aware of it. Despite this, the present suit was filed while suppressing the existence of the earlier suit. The Applicant/Proposed Defendant No. 2 has lawful rights in the 'B' schedule property and is, therefore, a necessary party to the

KACM710005972023



suit. If the application is rejected, the Applicant/Proposed Defendant No. 2 will suffer irreparable loss and injury. Hence, the prayer is to allow the application.

- 3.** Resisting the application, the Plaintiffs have filed objections contending that the application is not maintainable either in law or on facts, and that the supporting affidavit is filled with falsehoods. The intention behind filing the application is to assist the Defendant. No document relating to O.S. No. 305/2022 has been produced along with the application. The suit schedule property has already been partitioned among the members of the Plaintiffs, and hence, the Applicant/Proposed Defendant No.2 has no right whatsoever over the same. The application has been filed belatedly at the stage of cross-examination of PW-1, which itself indicates malafide intent on the part of the Applicant. If the Plaintiffs or the present Applicant/Proposed Defendant No.2 in O.S. No. 305/2022 succeed in their suit, they would obtain a share even in the suit schedule property. Therefore, the present Applicant/Proposed Defendant No.2 is not at all necessary in the present suit. Accordingly, the Plaintiffs pray that the application be dismissed.

KACM710005972023



4. Heard both sides.
5. 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 Applicant/ Proposed Defendant No.2 has made out sufficient grounds to allow the application?

Point No.2 : What Order?

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

Point No.1 : In the Negative

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

REASONS

7. **Point No.1** - The instant suit is filed seeking relief of declaration of title and the consequential relief of possession against the Defendant in respect of the suit schedule property. The suit is at the stage of cross-examination of PW-1. At this juncture, the Applicant has come up before the Court with the instant application with the prayer to permit him to come on record as a party Defendant.
8. 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 -

KACM710005972023



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.*

9. 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.
10. 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 Doctrine of *Dominus Litus* acts as a general rule with regards to impleadment 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

KACM710005972023



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.

- 11.** 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 Defendant establishes himself to be either proper or necessary party to the instant suit.
- 12.** The Applicant primarily asserts that the suit schedule property is the subject matter of an earlier suit filed for the relief of partition and separate possession, in which both the Plaintiffs in the

KACM710005972023



present suit and the Applicant are arrayed as Defendants. On this basis, the Applicant claims a right to be impleaded and to contest the present suit, as the suit schedule property is alleged to be their joint family property.

- 13.** The Applicant has also produced documents related to the said suit in O.S. No. 305/2022. Upon perusal, the documents do show that a suit seeking partition and separate possession was indeed filed, that the parties were named as Defendants, and that the suit schedule property is also reflected in that earlier suit. However, it must be noted at the outset that the present application filed by the Applicant is not maintainable for the simple reason that the current suit seeks the relief of declaration and consequential possession concerning the suit schedule property, based primarily on allegations of encroachment by the Defendant. Therefore, the scope of the present suit is entirely different from that of the earlier suit for partition and separate possession.
- 14.** It is also pertinent to mention that although the present suit is filed against a third party, the suit schedule property will ultimately be subject to the outcome of the earlier partition suit.

KACM710005972023



In these circumstances, it appears that no useful purpose would be served by allowing the Applicant to be impleaded as a Defendant. The present application appears to have been filed solely with the intent to delay the proceedings, without making out any valid grounds. The Applicant is neither a proper nor necessary party to this suit and hence, cannot maintain the present application. Hence, without pondering much, I answer **Point No.1** in the **Negative**.

15. Point No.2 - For the foregoing reasons, the following -

ORDER

I.A No.III filed by the Applicant/ Proposed Defendant No.2 under Order I Rule 10(2) r/w Section 151 of C.P.C is hereby dismissed.

Costs made easy.

(Dictated to Stenographer, after transcription, print out corrected and then pronounced by me in the Open Court on this the 2nd of June, 2025)

sd/-

(Rahul Shettigar)
Civil Judge & Addl. J.M.F.C,
Tarikere.

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