

IN THE COURT OF THE PRINCIPAL CIVIL JUDGE AND J.M.F.C.,
AT KOLLEGALA

:PRESENT:

Smt. Nandini.M.N, B.A.LLB.,
Prl.Civil Judge and JMFC.,
Kollegala.

Dated this the 22nd day of April 2024

ORIGINAL SUIT NO.140/2019

PLAINTIFFS

Ravi & Others

(By Sri N. Radhakrishna, Advocate)

V/S

DEFENDANTS

Sundrashetty & Others,

(By Sri SRA, SAR, RNK, Advocate)

**PROPOSED
DEFENDANT**

Siddappaswamy
S/o Late Masanashetty,
Aged about 80 years,
R/at Madhuvanahalli Village,
Masanashetty Street, Kollegal.

i	<i>Provision under which the application is filed</i>	<i>1 Rule 10(2) of CPC</i>
ii	<i>Relief sought for</i>	<i>Implead the proposed defendant</i>
iii	<i>The date on which the application is filed</i>	09.10.2023
iv	<i>Number of the Application</i>	Interim Application No.16
v	<i>The date on which the objections are filed by the different opponents</i>	18.07.2023
vi	<i>The date which the orders were passed on the said application</i>	22.04.2024

**ORDER ON I.A.NO.XVI FILED BY THE APPLICANT UNDER
ORDER I RULE 10(2) OF THE CODE OF CIVIL PROCEDURE**

This is I.A.No.XVI filed by the applicant under Order I Rule 10(2) of C.P.C., seeking to implead the proposed defendant as defendant no.12 in the suit.

2. In the affidavit accompanying the I.A.No.XVI, the plaintiffs have filed the above suit against the defendants for the relief of Partition and Separate Possession. The proposed defendant has stated that item No.2 of the suit schedule property Sy No. 514/4 measuring 1 acre 23 cents situated at Hondarabalu village, Palya Hobli, Kollegal Taluk, with the boundaries mentioned in the plaint. The said property originally belongs to Ku. Masanashetty and he had got two sons they are K. Masanashetty and Siddappaswamy. During the lifetime of Ku. Masanashetty another land bearing Sy No.40 in favour of K.Masanashetty and Siddappashetty under registered Will dated 31.03.1993, under the said Will K. Masanashetty has got 61 cents of land in Sy No.514/4 ie., item No.2 of the suit schedule property with the boundaries and further stated that in the suit filed by the plaintiffs as alleged that the defendant No.11 is purchaser of land bearing Sy No.514 measuring 1 acre 23 cents and the plaintiffs have sought the sale deed is not binding upon them and for partition of the said land along with other lands. It is further stated that under registered Will executed by Ku. Masanashetty in favour of his two sons K. Masanashetty and

Siddappaswamy is entitled to 61 cents and the plaintiffs have included the entire extent of 1 acre 23 cents in the said survey number out of which 31 cents belongs to him after the death of his father and he entitled to 61 cents of land in Sy.No.514/4 and the plaintiff has included the entire extent of 1 acre 23 cents and claiming a share in the suit schedule property and his right in respect of 61 cents in item No.2 of the suit schedule property. Since the proposed defendant is necessary and proper party for effective and completely adjudicate upon and settle all the questions involved in the suit. Accordingly, hence he prayed to allow I.A.No.XVI.

3. After filing of the I.A.No.XVI, the plaintiffs have filed detailed objection to the said I.A. denying the averments made by the said I.A.XVI filed by the proposed defendant is not maintainable either under law or on facts and same is liable to be rejected. It is further stated that Ku. Masanashetty during his life time Survey No. 514 and Survey No. 40 registered a Will in favour of K. Masanshetty and Siddappaswamy. As per survey no. 514/4, 61 cents situated at east by Basavachari land, west by B Schedule property i.e. remaining land, north by land of Gurunanjashetty and south by Kabini canal. The boundaries are false and fabricated fact. As such the said application is not entitled in law to be a necessary party in this suit. Hence, they prayed to reject the application.

4. Heard on both sides & perused the materials. The following points arise for my consideration:

1. Whether the applicant has made out sufficient grounds to allow IA No.XVI filed under order 1 rule 10(2) R/w section 151 CPC., to implead the proposed defendant No.12?

2. What order?

6. My answer to the above points are as under

Point No.1: In the Affirmative

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

REASONS

7. Point no.1:- As per Order I Rule 10 of C.P.C., 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 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.

8. As per this provision of law, this Court has power to add any person as plaintiff or defendant in the suit at any stage of the suit. The above suit is for the relief of Partition and Separate Possession of the suit schedule properties. The proposed defendant has submitted that item No.2 of the suit schedule property Sy No. 514/4 measuring 1 acre 23 cents situated at Hondarabalu Village, Palya Hobli, Kollegal Taluk, with the

boundaries mentioned in the plaint. The said property originally belongs to Ku. Masanashetty and he had got two sons they are Masanashetty and Siddappaswamy. During the lifetime of Ku. Masanashetty he has bequeathed the land bearing Sy No.514 and another land bearing Sy No.40 in favour of K. Masanashetty and Siddappaswamy under registered Will dated 31.03.1993 under the said Will K. Masanashetty has got 61 cents of land in Sy No.514/4 ie., item No.2 of the suit schedule property with the boundaries and the present suit filed by the plaintiffs as alleged that the defendant No.11 is purchaser of land bearing Sy No.514 measuring 1 acre 23 cents and the plaintiffs have sought the sale deed is not binding upon them and for partition of the said land along with other lands. The registered Will executed by Ku. Masanashetty in favour of his two sons K. Masanashetty and Siddappaswamy is entitled to 61 cents and the plaintiffs have included the entire extent of 1 acre 23 cents in the said survey number out of which 31 cents belongs to him after the death of his father and he entitled to 61 cents of land in Sy.No.514/4 and the plaintiffs have included the entire extent of 1 acre 23 cents and claiming a share in the suit schedule property. Thus, he is proper and necessary party to adjudicate the matter in controversy between the parties. Further, it is the domain of the plaintiffs to add or delete the parties as he or she wishes, to decide the matter in dispute pending for adjudication. Therefore, the proposed defendant is necessary party in order to adjudicate the controversies involved in the suit effectively and completely.

Moreover, if the proposed defendant is impleaded as defendant no.12, no harm would be caused to other side including the proposed defendant rather it would help in effective adjudication of the matter in dispute between the parties.

9. Point No.2: Therefore, this court is of the opinion that the proposed defendant/applicant has made out sufficient grounds to allow I.A.No.XVI. Hence I proceed to pass the following:-

:: O R D E R ::

I.A.No.XVI filed by the proposed defendant/applicant under Order I Rule 10(2) of C.P.C. is hereby allowed on cost of Rs. 300/-.

The proposed defendant is made as defendant no.12 to the suit.

The plaintiffs are hereby directed to carry out the amendment of the plaint and furnish the amended plaint.

(Dictated to the Stenographer, transcribed by her on Computer, same is corrected and then pronounced by me in the open court on this the **22nd Day of April 2024**).

Prl. Civil Judge and JMFC.,
Kollegal.

(Vide separate Order pronounced in Open Court)

:: O R D E R ::

I.A.No.XVI filed by the proposed defendant/applicant under Order I Rule 10(2) of C.P.C. is hereby allowed on cost of Rs. 300/-.

The proposed defendant is made as defendant no.12 to the suit.

The plaintiffs are hereby directed to carry out the amendment of the plaint and furnish the amended plaint.

(Dictated to the Stenographer, transcribed by her on Computer, same is corrected and then pronounced by me in the open court on this the **22nd Day of April 2024**).

Prl. Civil Judge and JMFC.,
Kollegal.

For amendment and amended
plaint by

Prl. Civil Judge and JMFC.,
Kollegal.

CORRECTED