

KADG220039722021



**IN THE COURT OF THE PRL. CIVIL JUDGE &
J.M.F.C., CHANNAGIRI**

:: Present ::

**Shri. Siddalingayya B. Gangadharamath,
B.Com. L.L.B.,(Spl)
Prl. Civil Judge & J.M.F.C.,
Channagiri**

O.S.No.264/2021

Dated this the 22nd Day of February 2023

PLAINTIFF : Sri. Govindanaika

(By Shri. S.T/K.S.S., Adv.,)

V/s

DEFENDANTS : Sri. Sevyanaika and Others

(By Shri. S.P.K., Adv.,)

I.A. NO.V

Applicant/Plaintiff : Sri. Govindanaika

V/s

**Opponents/Defendants: Sri. Sevyanaika and
Others**

ORDER ON I.A No. 5

Proposed defendants filed the instant application under Order 1 Rule 10(2) R/w Section 151 of CPC praying for their impleadment as defendants 4 to 14 and the application at the stage of plaintiff's evidence.

2. Briefs facts of the affidavit as under:-

Proposed defendant No.4 sworn the affidavit in support of the application. Wherein he stated that, his uncle filed this suit for the relief of partition and separate possession. The plaintiff father of proposed defendant No. 4, proposed defendant No.7 to 11 are full brothers. Having knowledge of the said fact, the plaintiff filed this suit without adding the applicants even though pleaded that suit schedule property is ancestral property. The proposed defendants are being the members of joint family are necessary parties and as such filed the instant application. By these statements, the proposed defendants prayed to allow the application.

3. Statement of objection filed by the plaintiff as under:

Plaintiff submitted that the application of proposed defendant is neither tenable in law nor on facts of the case. The plaintiff being the kartha of the joint family filed this suit and has categorically pleaded the said fact

in para No. 4 of the plaint. Thus, the application is not maintainable. If the proposed decree is passed, the proposed defendants will be benefited out of it and as such the application deserves to be dismissed with heavy cost.

4. Based on the rival contentions rised by the both the parties, the following points would arises for my consideration.

POINTS

1. Whether he presence of proposed defendant is necessary for the adjudication of the suit ?

2. What Order ?

5. Heard the learned Advocates appearing for plaintiff and proposed defendants. Perused documents placed on record, my answer to the above points are as under:-

POINTS

Point No.1: In the Affirmative,

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

:: REASONS ::

6. POINT No.1:- The plaintiff has filed this suit for the relief of partition and separate possession of alleged legitimate share in suit schedule property and has categorically pleaded that his representing the branch of Lokyanaika S/o Nanjyanaika. The contesting defendants filed the written statement and have setup various defence including the maintainability of suit on the basis for non-joinder of necessary parties, limitation and alleged alienations. In that backdrop of the matter, the necessary issue with respect to non-joinder of necessary parties his also framed.

7. The plaintiff has produced the genealogical tree of the family. Wherein the proposed defendants are shown as the descendants of Lokyanaika , Murthynaika. As the plaintiff has sought partition in respect of the ancestral property and his right in accordance with the Hindu Succession Act. In terms of synopsis No. 332 of Mulla's Hindu Law, if the branch head is alive he is the necessary party to the partition suit and he can represent the entire branch. As per section 19 of the Hindu Succession Act, such branch would get the share per capita. If the branch head is not alive then all the legal heirs are necessary parties to the partition suit and in that case the share would be divided per stripe. In the case on hand and consideration of the genealogical tree, the plaintiff is the son of Lokyanaika and said

Lokyanaika had left other legal heirs. As can be seen from the genealogical tree Lokyanaika was the head of smaller unit of the family headed by Nanjyanaika. Upon his death all the legal heirs of Lokyanaika are entitled to claim share in the ancestral property and are necessary parties. The plaintiff being one amongst the legal heirs of Late Lokyanaika, without any such express or implied authorization can not act as head of the branch. In the circumstances, the other legal heirs filed the application of this nature, then they need to be allowed and participate the case on their own. Thus the proposed defendants are necessary parties to the suit and accordingly **Point No.1** held in the **Affirmative**.

8. Point No.2: As a result, I proceed to pass the following;

ORDER

**I.A No.5 filed Under Order 1
rule 10(2) R/w Section 151 of CPC is
hereby allowed.**

**Consequently, the proposed
defendants are permitted to come on
the record as defendants No. 4 to 14.**

The plaintiff is hereby directed to carry out the necessary amendment in the cause title and submit the amended plaint accordingly.

No order as to cost.

(Dictated to the stenographer dire and typed by her directly on computer, corrected and then pronounced by me in Open Court on this **22nd day of February 2023**)

Sd/-
(Siddalingayya B.Gangadharamath)
Prl. Civil Judge & J.M.F.C.,
Channagiri.