

**IN THE COURT OF THE II ADDITIONAL SENIOR CIVIL
JUDGE AND J.M.F.C. HUBBALLI**

Present:- Smt. Deepa G Manerkar,
B.Com. L.L.B, (Spl.)
II Addl. Senior Civil Judge & J.M.F.C.,
Hubballi.

Dated this the 07th day of August 2025

O.S. No.63/2021

Smt. Manju @ Manjula W/o Ganesh Khandare and
another

...plaintiffs/s

-Versus -

Sri. Subhas S/o Shivajirao Kadam and others

...Defendant/s

IA.NO.XXXVI

Smt. Manju @ Manjula W/o Ganesh Khandare
and another

APPLICANT/ PLFFS.

Versus -

Sri. Subhas S/o Shivajirao Kadam and others

OPPONENT/ DEFTS.**:: ORDERS ON IA. NO.XXXVI FILED UNDER ORDER I RULE
10(2) R/W SEC.151 OF C.P.C ::**

The present I.A. under Order I Rule 10(2) R/w Sec.151 of CPC has been filed by the plaintiffs to implead the proposed defendants as defendant No.22 and 23 in the present suit.

2. In the affidavit annexed to the present IA, the plaintiff No.1 has sworn that the present suit is filed for the relief of partition and separate possession and also for the relief of declaration. That she has sought for prayer in respect of suit schedule B Sl.No.1 property measuring 11 guntas which is the family property. At the time of filing the present suit the said property was measuring 11 guntas. However, on the basis of created will, one Jithendra S/o Shivrao Kadam has got mutated

his name and recently two RTCs are made in respect of said property and the names of proposed defendants is appearing in respect of RTC pertaining to Sy.No.98/A measuring 07 gunthas out of total 11 gunthas. That Suit Schedule Sl.No.B property measuring 11 guntas bearing R.S.No. 98/*/1A/1 is ancestral property of the plaintiffs and defendants. However, at the time of filing the present suit, the plaintiffs did not notice about the improvements that taken place. The proposed defendants No.22 and 23 names are appearing in the RTCs who are not connected to the family of the plaintiffs and separate RTC has been issued in respect of 07 gunas of land as such they are the necessary parties to the suit. Hence prayed to allow the application.

3. The counsel for proposed defendant No.22 and 23 has filed objections to the present I.A., contending that the application filed by the plaintiffs is illegal and

same is not maintainable under the eye of the law and liable to be dismissed in limine. The alleged allegations against proposed defendants are all false, misleading, concocted, manipulated and falsely created one with an ulterior intention to suit her illegal claim against this opponents-proposed defendants .

4. The plaintiffs is a diligent party of the suit and has to disclose true and clear set of facts without ambiguity in affidavit, in order to maintain her version of the case in accurate line. The plaintiffs-applicant has filed incomplete, ambiguous un-clarified version of the facts which in itself is not maintainable under the eye of law. There was a dispute between the Kadam family and this proposed defendants family in respect of the Agriculture land measuring 02 acres and 27 guntas bearing R.S.No.98/1A situated at Krishnapur village of Hubballi Taluka, it reached Hon'ble Apex Court in Civil Appeal No.2036/1992, appellants and

respondents of said appeal have settled the dispute by filing joint memo dated 27-07-2000 under said joint memo it has clearly agreed that Abdulkarim shall receive the compensation amount with respect to acquired land and Abdul Karim further entitled 07 guntas out of remaining un-acquired suit land. In accordance with the above order of the Hon'ble Apex Court, the proposed defendants have filed execution petition to execute the said order before the Hon'ble Prl. Senior Civil Judge Court Hubballi in Exe. No.135/2012. The Hon'ble Principal Senior Civil Court Hubballi after hearing pleased to execute the order passed by Hon'ble Apex Court, and the opponents-proposed defendants have took lawful possession and wahiwata of the 07 Guntas land in the above R.S. No.98/1A. Accordingly entries are effected in the revenue records by the concerned revenue authorities. The contents of the alleged affidavit at para No.3 and 4 are misleading false,

concocted, manipulated and falsely created one with an ulterior intention to suit her illegal claim against this opponents-proposed defendants. Further it is crystal clear from the concerned revenue records that the entries of the names opponents-proposed defendants are in accordance with the law, on this point alone IA deserve to be dismissed in limine. If the above I.A filed by the plaintiffs-applicant is allowed, same will become the second round litigation which is not permissible under the eye of the law. There is no mention of who is whom in the suit, how is the impleading this opponents-proposed defendants is necessary in the suit. There is no mention of the dates constituting the cause and allegations leading to impleading the opponents-proposed defendants The affidavit is very vague with no clear set of facts in chronological order. The affidavit does not contain clear facts.

5. The Hon'ble Principal Senior Civil Judge Court pleased to execute the order of the Hon'ble Apex Court under the circumstances the purpose of impleading opponents-proposed defendants to decide a case once for all dose not arise at all, It is not shown whether the impleading opponents-proposed defendants necessary and proper parties also in the suit. Nowhere in the affidavit it is clearly stated the facts leading to filing of the case and the facts intervened in the middle in spite of due diligence on the part of the plaintiffs the party cannot be allowed to continue his legal latches Indefinitely without there being a valid reason for condoning it. That under Rule 42 of the Karnataka Land Reveue Rules, a person shall give notice and information to the concerned Taluka Office to get entered the pending Civil claims in Civil Court, since as per IA affidavit averments the plaintiffs-applicant has not stated whether she has taken such precaution in alleged

property or not Hence the due diligence of plaintiffs is not there and it shows some collusion of plaintiffs and several other defendants to use and abuse process of Court for their illegal acts and omissions. Hence, prayed to reject the I.A.

6. Heard arguments from both the side counsels.
7. The points that arise for my consideration is:-
 1. Whether the proposed defendant No.22 and 23 are necessary parties to the suit
 2. What Order ?
8. My findings on the above points is as follows :
 - Point No.1 : In the Negative
 - Point No.2 : As per final order for the following :-

:: R E A S O N S ::

9. **Point No.1:** The present I.A. is filed by the counsel for the plaintiffs to implead proposed defendant No.22 and 23 in the present suit when the matter is posted

for hearing on the I.A's. The main ground urged by the plaintiffs for impleading proposed defendant No.22 and 23 by name one Mohammad Yusuf S/o Abdul Karim Maniyar, and Abdul Sattar S/o Abdul Karim Maniyar is that the present suit is filed for the relief of partition and separate possession. That the RTC pertaining to suit schedule Sl.No.1 property measuring 11 Guntas was standing in the name of one Jithendra S/o Shivajirao Kadam and said entry was made on the basis of false will. That the recently there are two RTCs being issued in respect of said property and in respect of Sy.No.98/1A/1, measuring 7 guntas separate RTC has been issued. As per the plaintiffs Sy. No.98*/1A/1 measuring 11 guntas is joint family property. That the names of proposed defendant No.22 and 23 are appearing in the revenue records as such, the impleading of proposed defendants is necessary to decide the case.

10. On the contrary, the proposed respondent No.22 and 23 have filed objection contending that the proposed respondents are not at all necessary parties to be impleaded in the suit. As per them there was a dispute between the family of plaintiff and proposed defendants in respect of suit schedule Sy.No.98/1A/1 and the said matter reached before Hon'ble Apex Court and parties have got compromised the matter. As per which the proposed respondents are entitled for 7 guntas of land. In pursuance of the same they had filed execution petition in E.P.No.135/2012 and taken possession of the said 07 guntas in R.S.No.98/1A/1 and their names have been mutated in the revenue records. As such the matter between the plaintiffs and proposed defendants in respect of 07 guntas of land in R.S. No.98/1A is already concluded and decided as such they are not at all necessary parties to the suit.

11. The counsel for the plaintiffs argued that the suit schedule property is the ancestral property of the plaintiffs and the suit has been filed in the year 2021 for the relief of partition and separate possession. That the subdivision has been effected in respect of 07 guntas of land in R.S. No.98 in the year 2022-23. No notice of execution petition was sent to the plaintiff in which the proposed defendants claim to have taken possession of said 07 gunthas of land. He also argued that the plaintiff No.1 and 2 are married long back and settled in Mumbai itself hence no notice of execution petition has been served on the plaintiffs. He also argued that as per order of Hon'ble Apex Court 07 gunthas of land is to be demarcated but who has demarcated the said 07 gunthas is not known as such the proposed defendants cannot claim said 07 guntas of land. The plaintiffs is not at all party to the said execution petition. That the principles of resjudicata will

not apply to the present I.A. because the proposed defendants No.22 and 23 are necessary parties as their rights are yet to be decided and only after conclusion of trial it can be decided whether they are entitled for 07 guntas of land or not. At present as their names are appearing in the records of rights Sy.No.98/1 hence they are necessary parties for the adjudication of the suit.

12. On the other hand, the counsel for proposed Defendant No.22 and 23 argued that the father of the plaintiffs had executed agreement of sale in respect of 02 acre 20 guntas of land in favour of father of proposed defendants No.22 and 23. The father of the proposed defendants had filed O.S.No.27/1970 which was decreed. Against which father of the plaintiffs represented by LRs had filed R.A. No.26/1979 in which the present plaintiffs were also parties and the said appeal was allowed in part. Being aggrieved by the same, the proposed defendants

No.22 and 23 had preferred RSA No.373/198/1984, which was decreed in favour of proposed defendant No.22 and 23 by restoring the judgment of trial court. That being aggrieved by the same the present plaintiffs herein and others LR's of Shivaji Kadam went in appeal before Hon'ble Apex Court in Civil Appeal No. 2036/1992 and before Hon'ble Apex Court the matter was compromised and the appellants in said case were directed to give the possession of 07 guntas of land in favour of the proposed defendant No.22 and 23. After compromise E.P.No.135/2000 filed and possession warrant was issued and possession has been taken by the proposed defendant No.22 and 23, as per the order of court and bailiff report is also filed. Thereafter only they got mutated their names in respect of said 07 guntas of land. That the matter between the proposed defendants and the plaintiffs is already adjudicated and it has reached finality. That the plaintiffs

cannot again re-agitate the same before this court. Therefore neither the proposed defendants are necessary nor proper parties, as there is no adjudication required to be done. He also argued that the present application is vexatious and only filed to harass the proposed defendants. Hence prayed for rejecting the application.

13. In support of his I.A., he relied upon decision reported in **Civil appeal No.7108/2025 in between Sulthan Said Ibrahim Vs. Prakasan and others.**

I have gone through the plaint averments in the backdrop of the present IA so also documents produced by both parties in support of their contention. In the plaint it is averred that the suit schedule properties are ancestral properties of plaintiffs and defendant. That the plaintiffs are having 2/13th share in the suit properties. So far as No.98*/1A/1 is concerned, it is averred in plaint that one deceased Jeetendra husband of defendant No.6 by

colluding with revenue authorities on the basis of created documents got divided the said property and got executed gift deed in respect of No.98*/1A/1 on 08-12-2014 and on the basis of said document the said Jeetendra got executed one Will in favour of defendant No.7 on 08-04-2019 and said documents have been created and not registered one. The plaintiffs has filed appeal before the concerned Revenue Authority challenging the mutations. Therefore, the plaintiffs is claiming that Sy.No.98*/1A is her ancestral property and the description of said property as per the plaint is given at Sl.No.1, it is mentioned as 98*/1A measuring 11 guntas and 98*/1A/2 measuring 01 acre 03 guntas 09 anna in which only 01 acre 2 gunta 9 ana.

14. On the other hand, on going through the documents produced by the counsel for proposed defendants, it can be gathered that one Abdul Kasimsab Abdul Saheb Maniyar i.e., the father of the plaintiffs herein

had filed O.S.No.27/1970 against one Shivaji Piraji Kadam i.e., the father of the plaintiffs herein. The said suit was filed for the relief of specific performance of contract and same was in respect of R.S.No.98/1A measuring 02 acres 27 guntas situated at Krishnapur Village. The said suit is decreed in favour of the plaintiff in said suit directing the defendants in said suit to execute registered sale deed in favour of the plaintiffs in said suit. It appears that being aggrieved by the said judgment and decree. The LR's of said Shivaji Piraji Kadam, had preferred R.A.No.26/1979 before the Hon'ble I Addl. District and Session Judge, Dharwad. That the said appeal was allowed and instead of relief of specific performance of contract refund of earnest money was granted. That being aggrieved by the said Judgment and decree said Abdulkarim Saheb Maniyar has preferred RSA No.373/198/1984 before Hon'ble High Court of Karnataka against LR's of Shivaji Kadam. That in

the appeal preferred in R.A.No. 26/1979, the present plaintiffs No.1 herein is respondent No.1(F) and plaintiffs No.2 is respondent No.1(M). That in the RSA No.373/198/1984. The plaintiffs No.1 herein is respondent No.1(F) and plaintiffs No.2 is respondent No.1(M). That the said appeal has been allowed and judgment of the trial court in O.S.No.27/1970 has been confirmed.

15. Being aggrieved by the Judgment of Hon'ble High Court of Karnataka in RSA No.373/198/1984, the legal heirs of said Shivaji Kadam had preferred Civil Appeal No.2036/1992 in which the appellant No.1(E) is plaintiff No.1 and appellant No.1(J) is plaintiffs No.2 in present suit. That the said appeal has been ended in compromise, as per which the decree holder i.e. original plaintiffs in O.S.No.27/1997 i.e., the father of the present proposed defendants herein was entitled for 07 guntas of land in R.S

No. 98/1A/1 of Krishnapur Village, based on the compromise in Civil Appeal No.2036/1992 E.P. No.135/2012 was filed before Prl. Senior Division ordered for delivery of possession warrant has been executed and 07 guntas of land has been handed over to the possession of the proposed defendants and direction was also given to the Tashildar Hubballi to enter the names of original decree holder by name Abdul Sattar S/o Abdul Karim Sahib Maniyar. And Muhammad Yusuf Sano, Abdul Qasim Manjar in the RTC pertaining to RS No. 98/1A/1 of Krishnapur Village measuring 07 guntas. Therefore from the above documents produced by the proposed defendants herein, it is clear that in pursuance of the compromise arrived at between the father of the defendants and LR's of one Shivaji Kadam including the plaintiffs herein matter has been settled and the names of the present proposed defendants has been mutated in

respect of 07 guntas of land in R.S.No.98/1A/1. The RTC of Sy.No.98/A also depicts the names of the proposed defendants No.22 and 23 as joint owners in respect of 07 guntas of land. Therefore, the above proceedings the rights of proposed defendant No.22 and 24 is already adjudicated.

16. Therefore, when the dispute in respect of 07 guntas of land in Sy.No.98/1A/1 has been already finally decided and the names of the proposed defendants have been mutated on the basis of compromise arrived before the Hon'ble Apex Court in which the present plaintiffs were parties, they cannot contend that the presence of the proposed defendants is necessary to decide the present suit. That apart though it is argued by the counsel for the plaintiffs that since the plaintiffs were residing at Mumbai and settled in the Mumbai since their marriage, they were unaware of execution proceedings cannot be accepted only

on the ground that the said plaintiffs are not parties in execution petition. Therefore the defendants are neither necessary nor proper parties to the present suit. Their presence is not at all required for the decision of the case. It appears that the present application is filed without any merits and same is devoid of merits as such same has to be dismissed with imposing some costs. Accordingly above point is answered in the **Negative**.

17. **Point No.2:** In view of my findings on point No.1, this court proceeds to pass the following:

O R D E R

I.A.No.XXXVI filed by the counsel
for plaintiffs under Order 1 Rule 10(2)
R/w Sec.151 of CPC is hereby rejected
with cost of Rs.1,000/-.

(Dictated on AI , corrected by stenographer, verified by me, and then pronounced in the open court on this the 07th day of August 2025.)

Sd/-
(Smt. Deepa G. Manerkar)
II Addl. Senor Civil Judge and JMFC
Hubballi.