

IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL
JUDGE & J.M.F.C., HUBBALLI

Present:

SMT. SARVAMANGALA K.M.,
B.A. LL.B.,
I Additional Senior Civil Judge and JMFC.,
Hubballi.

O.S. No.76/2024

Dated this the 02nd day of May, 2026

Plaintiff/s : Shreya D/o Shashidhargouda Patil
and others.

.Vs.

Defendant/s : ChannabasanGouda S/o
Siddanagouda Patil and others.

PARTIES TO I.A. No.XIX

Applicant : Shreya D/o Shashidhargouda Patil
and others.

.Vs.

Opponents : ChannabasanGouda S/o
Siddanagouda Patil and others.

i. Provision under : Under Order I Rule 10(2)
which application is R/w Sec.151 of CPC
filed

ii. Relief sought for : To implead the proposed
defendants No.14(a) to
14(c).

iii. The date on which : 16.04.2025
application is filed

- iv. Number of the : XIX
application
- v. The date on which : 24.06.2025 (by D.14(a) to
objections are filed D.14(c))
by different
opponents
- vi. The date on which : 02.05.2026
orders were passed
on the said
application

ORDERS ON I.A. No.XIX

The plaintiffs have filed this I.A. under Order 1 Rule 10(2) r/w. Section 151 of C.P.C. seeking to implead the proposed defendants No.14(a) to 14(c).

2. The proposed defendant No.14(a) to 14(c) filed objection to this I.A.

3. Heard. perused the pleadings and materials placed on record.

4. The point for consideration are as follows:

1. whether the proposed defendants No.14(a) to 14(c) are necessary parties to the suit ?

2. What order ?

5. My findings on the above points are as follows:

Point No.1 : In the Affirmative.

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

REASONS

6. **Point No.1:** *This suit is filed by the plaintiff seeking the relief of partition and separate possession and declaration against the defendants. The brief facts of the affidavit annexed to application is that, the defendant No.14 is the purchaser of one of the suit property and during course of service of summons it is learnt that said defendant No.14 expired and after knowledge of the same plaintiff enquired about the legal heirs of the deceased and the proposed defendant No.14(a) to 14(c) are the only legal heirs of the deceased and right to continue the suit against the legal representatives of deceased defendant No.14 remains. Therefore, they are necessary parties to the suit and hence, it is necessary to bring the said legal heirs on record by impleading them as parties to the suit. Hence, this application and prayed to allow the application.*

7. *The objections of the defendant No.14(a) to 14(c) is that the application is not tenable in the eye of law. The proposed defendant No.14(a) to 14(c) should have been added as independent parties but not as heirs of deceased defendant No.14. It is further submitted that earlier in this suit it was brought to the court notice that defendant No.14 is deceased much before filing of this suit and plaintiff filed interim applications to bring legal heirs and for setting aside*

abatement order, but in the year 09.05.2014 defendant No.14 expired and the suit is against the dead person. The application to implead them as independent party is necessary but as the heirs of defendant No.14 is illegal. When the suit properties belongs ancestral joint properties during lifetime of husband wife is not entitled to claim the alienated property. Hence, the proposed defendant No.14(a) to 14(c) are not necessary parties to this suit and prayed to dismiss the I.A.

8. *On perusal of the entire materials available on record, it is noticed to the court that this is the application filed by the plaintiff and Order I Rule 10 (2) of CPC seeking to include the proposed parties as the legal heirs of defendant No.14 as defendant No.14(a) to 14(c). It is the contention of the plaintiff that defendant No.14 though arrayed as a party to the suit was found to have died prior to the institution of the suit and that the said fact came to the knowledge of the plaintiff subsequently. It is further contented that the proposed parties are the legal heirs of the deceased defendant No.14 and are necessary parties for effective adjudication of the dispute.*

9. *On the other hand, the proposed parties have objected to the application, contending that admittedly defendant No.14 had died much prior to the filing of the suit and therefore the suit in so far as*

against defendant No.4 is a nullity. It is further contented that the question of bringing legal representatives on record under Order XXII of CPC does not arise and the present application is not maintainable in the form sought.

10. The admitted factual position is that defendant No.14 had died prior to the institution of the suit. It is well settled that a suit filed against a dead person is nullity and non est in the eye of law. Consequently, the Provisions of Order XXII of CPC, which deal with substitution of legal representatives upon death of a party during a pendency of the suit, are not attracted in the present case on hand. However, the question that arises is whether the legal heirs of such a deceased person can be brought on record in any other capacity.

11. Order I Rule 10 (2) of CPC empowers the Court to add any person as a party at any stage of the proceedings whose presence before the Court is necessary or proper for effective and complete adjudication of the issues involved in the suit. In the present case, the suit is one for partition and separate possession. The presence of all co-sharers or persons climbing through the propositus is essential for complete adjudication. If the proposed parties are the legal heirs of deceased defendant No.14 and claim interest in the suit schedule properties. Their presence

is necessary to avoid multiplicity of proceedings and to effectively determine the rights of the parties.

12. *Though the plaintiff has styled the application as one for including the proposed parties as legal heirs of defendant No.14, in strict legal sense, such substitution is impermissible since defendant No.14 was not alive on the date of institution of the suit. Nevertheless, the nomenclature of the application is not decisive. The substance of relief sought is to bring the proposed parties on record if they are found to be necessary or proper parties. They can be included as independent defendants under Order I Rule 10 (2) of CPC. Therefore, the objection raised by the proposed parties is that the application is not maintainable as one for substitution is legally sustainable to the defendant. However, it does not bar the Court from exercising its power and Order I Rule 10 (2) of CPC to include them as independent parties.*

13. *In view of the nature of the suit and the necessity of adjudicating the rights of all concerned parties in the suit schedule property, this Court is of the opinion that the proposed parties are necessary parties. Hence, I answer the **point No.1 in the Affirmative.***

14. **Point No.2:** *In view of the aforesaid reasons, I proceed to pass the following;*

ORDER

The IA No.XIX Under Order I Rule 10(2) read with Section 151 of CPC filed by the plaintiffs is hereby partly allowed.

The proposed parties are included as defendant No.18 to 20 as independent defendants and not as legal representatives of deceased No.14.

It is made clear that the arraying of deceased defendant No.14 in the cause title is treated as a nullity and no relief can be claimed against them.

Plaintiff is hereby directed to carry out necessary amendment in the case title within 14 days from the date of this order.

*For amendment and amended
plaint by:03.06.2026.*

*(Dictated to the Stenographer directly on computer, script corrected and then pronounced by me in the Open Court on this the **02nd day of May, 2026**)*

sd/-

*(Smt. Sarvamangala K.M.)
I Addl. Senior Civil Judge and JMFC.,
Hubballi.*