

**ORDER ON IA No.1**

The Advocate for proposed defendant has filed I.A. No.1 U/o.1 Rule 10(2) of C.P.C. praying this court to implead the proposed defendant as defendant No.3 in the suit. In support of the application the proposed defendant No.3 has filed affidavit stating that he is the brother of plaintiffs and defendants and he is absolutely entitle for the suit property. His father has executed GPA in his favour as he is eldest son to undertake the development, conversion, cultivation and take and sell the crops grown in the lands. The plaintiffs and defendants had got an alleged gift deed executed by his father and made adverse claims in respect of suit properties. Hence, he has filed OS No.273/2023 and the plaintiffs and defendants have appeared in the said suit. The plaintiffs and defendants have deliberately and intentionally filed this suit without making this defendant as party to the suit. The gift deed itself is under challenge in a prior suit. If the proposed application is not allowed, he will be put to irreparable loss and hardship. Hence, prayed to allow the application.

2. The counsel for defendants has filed objection to the application contending that the contents of the application and affidavit are not true and correct and not maintainable either in

law or on facts. Further contended that as per gift deed the plaintiffs and defendants are absolute owners and in possession of the suit properties. There is separate suit about gift deed, which is pending. The Husensab Adamsab Bijapur is the absolute owner of the suit properties and they are his self-acquired properties, who has gifted the same to the plaintiffs and defendants. Therefore, the proposed defendant has no any right to question the same. Hence, the proposed defendant is not necessary party to this suit and prayed to reject the application.

3. The counsel for plaintiff has filed objections to the I.A. No.1 contending that the application is neither tenable in law nor on facts. The proposed defendant is having knowledge that the plaintiffs and defendants schedule properties were the absolute properties of their father, who has legally gifted out the same in favour of plaintiffs and defendants No.1 and 2 by virtue of gift deed and handed over the possession. The GPA in favour of proposed defendant No.3 will not come on the way of rights of the plaintiffs and defendants. Hence, the proposed defendant has got nothing to say and he has got no right, title and interest in the properties in question. This application is filed

only to drag on the matter. Hence, prayed to reject the application.

4. Heard and perused the records. The following points arise for my consideration:

1. Whether the proposed defendant No.3 has made out a grounds to allow the application.

2. What order?

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

1. In the Affirmative.

2. As per final order, for the following:

### **REASONS**

6. **Point No.1**: The plaintiffs have filed this suit against the defendants for partition and separate possession in respect of the suit properties. The proposed defendant/ applicant is none other than the brother of plaintiffs and defendants. Accordingly to proposed applicant his father has executed GPA in his favour in respect of suit properties. Without knowledge and consent the plaintiffs and defendants had alleged gift deed being executed by his father. In this regard he has filed OS No.273/2023 on the file of II Addl. Civil Judge, Hubballi against plaintiffs and defendants. There is a dispute between the parties with regard to gift deed and

GPA. The applicant is none other the brother of plaintiffs. Whether the alleged gift deed executed by father of plaintiffs and defendants are true and correct. This court has given opportunity to contest the case to the applicant, because father of application has executed GPA in respect of same properties. The presence of proposed defendant is necessary in order to decide the rights of the parties fully and completely. Without giving opportunity and made as party in the suit proceedings, the adjudication of the rights between the parties cannot effected. Hence, I answer point No.1 in **Affirmative**.

7. **Point No.2**: In view of my answer to the above point in Affirmative, I proceed to pass the following:

**ORDER**

The I.A. No.1 filed by the proposed defendant No.3 U/o.1 Rule 10(2) R/w. Section 151 of C.P.C. is hereby allowed.

The proposed defendant No.3 is impleaded as defendant in the suit proceedings.

The plaintiffs are directed to carry out the amendment and file the amended plaint.

Call on

**Prl. Senior Civil Judge, Hubballi.**