

**IN THE COURT OF SENIOR CIVIL JUDGE AND
JMFC, KALAGHATAGI**

PRESENT

**SRI. RAVINDRA L. HONOLE., B.A., LL.B. (Spl)
SENIOR CIVIL JUDGE & JMFC, KALAGHATAGI**

DATED THIS 21ST DAY OF SEPTEMBER 2024

CIVIL MISC.No.05/2023

PETITIONERS:

1. Basappa S/o Kenchappa Kurubar @
Hosamani and others

(Sri. C.S.H., Adv)

Vs

RESPONDENT:

1. Mannappa A/F Kareyappa @ Kareppa
Jangin

(Sri. M.B.J., Adv)

PARTIES TO IA No.1

APPLICANTS:

1. Basappa S/o Kenchappa Kurubar @
Hosamani and others

Vs

OPPONENTS:

1. Mannappa A/F Kareyappa @ Kareppa
Jangin

ORDER ON I.A.No. 1

Applicant/petitioner has filed this application praying to implead the proposed respondent No.2 and 3 as party to the proceedings.

2. Application is supported by the affidavit sworn to by the applicant/petitioner No.1 wherein it is contended that this petition is filed for disobedience of order passed in O.s.No.124/2022. The proposed respondent No.2 and 3 are the sons of respondent No.1 having knowledge of pending litigation and order passed on interim application have intentionally to skip the share of petitioners made gift deed and created third party interest. Therefore, it is necessary to implead them as party to the proceedings. Therefore, prays for allowing the petition.

3. In pursuance of notice the proposed respondents appeared through counsel have filed objections denying the contents of application. It is contended that the proposed respondents are having knowledge of pending proceedings in O.S.No.124/2022. The respondent No.1 is the elder of

the family looking the affairs of family. The proposed respondents have no knowledge of proceedings of suit. The petitioners on imaginary grounds have filed the application. The contents of the application are false and frivolous. The proposed respondents are not the necessary parties and they cannot be impleaded as party to the proceedings. Therefore, prays for dismissal of application.

4. Heard the arguments.

5. The following points arise for my consideration as under:

1. Whether the proposed respondent No.2 and 3 are the proper and necessary party for effective adjudication of petition?

2. What order?

6. My findings on the above points are:

POINT No.1 : In the affirmative

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

REASONS

7. **POINT No.1** : The petitioners have filed this petition u/o 39 rule 2(a) of CPC for disobedience of order of court. It is alleged that the respondent No.1

during pending of petition had made gift and third party interest to avoid the share of the petitioners. Therefore, the proposed respondent No.2 and 3 who are beneficiaries under gift deed are necessary party to the proceedings.

8. The petitioners contended that the respondent No.1 has intentionally got created gift deed in favour of proposed respondent No.2 and 3 to avoid the share of the petitioners. The intention of parties is to be proved at the time of evidence. At this stage I have gone through the decision of Hon'ble High Court of Karnataka, Bengaluru in WP No.54219/2018 (GM/CPC) relied by learned counsel for petitioners. The Hon'ble High Court in the said decision it is held that the proceedings u/o 39 rule 2(a) of CPC is to be invoked against the third parties. In the present case on hand the petitioners contended that the respondent No.1 during pendency of proceedings has gifted property and created third party interest in favour of proposed respondent No.2 and 3. Therefore, it is necessary to implead the proposed respondent No.2

and 3 as party to the proceedings. Hence, I have answered point No.1 in the affirmative

9. **POINT No.2**: As discussed above, I proceed to pass the following:

ORDER

The application filed by the Applicants/ petitioners U/o 1 rule 10(2) of CPC is hereby allowed.

The proposed respondent No.2 and 3 are to be impleaded as respondent No.2 and 3.

(Dictated to stenographer directly on computer, typed by him, then corrected, printed and pronounced in the open court on this **21st day of September 2024**)

(R.L.HONOLE)
SR.CIVIL JUDGE & JMFC,
KALAGHATAGI