



ORDER

IN THE COURT OF CIVIL JUDGE AND JMFC, LAXMESHWAR

Presided Over by:

Satisha M. B.A.L., L.L.B.

Civil Judge and JMFC, Laxmeshwar

DATED THIS 15TH DAY OF APRIL, 2025

O.S.No.49/2021

Plaintiff:

Shri. Putrappa S/o. Mallappa Mahar @ Myageri
@ Madar, Age: 54 Yrs., Occ: Agriculture,
R/o. Gojanur, Tq: Laxmeshwar, Dt: Gadag
Now at Kalasa, Tq: Kundagol.

(By Shri. S.D.K. Advocate)

Vs.

Defendant:

Shri. Mallappa S/o. Yallappa Mahar @ Myageri
@ Madar, Age: 75 Yrs., Occ: Agriculture,
R/o. Gojanur, Tq: Laxmeshwar, Dt: Gadag.

(By Shri. B.N.S.Advocate)

PARTIES TO THE I.A.NO.VIII

Applicant: Halappa S/o. Mallappa Madar @ Harijana

// Vs //

Opponent: Shri. Putrappa S/o. Mallappa Mahar @ Myageri
@ Madar,

**ORDERS ON IA NO.VIII FILED UNDER ORDER 1 RULE
10(2) READ WITH SECTION 151 OF CODE OF CIVIL
PROCEDURE**

**Stage of the suit at the time of filing of application:-
Further Defendant Evidence.**

Nature of the suit: Partition and separate possession.

The instant suit is filed by the impleading applicants/proposed defendant No.2 to 4 to come on record as regular defendants.

2. The impleading applicants averred that, they are the legal heirs of deceased defendant i.,e Mallappa S/o Yallappa Mahar @ Harijan. The plaintiff is a stranger to the family of defendant. In view of death of defendant and securing the information about the pendency of suit, the instant application is filed to come on record being legal heirs of deceased.

3. Per contra the plaintiff has filed objections to the said application and denied the averments made in the application. The plaintiff's main objections is that, the plaintiff is the only legal heir of deceased defendant and same was admitted by the defendant in his cross-examination. The wife of deceased by name Nilavva has left the defendant, thereafter defendant remained without marrying any one else, as such plaintiff and defendant are enjoyed the suit property and they are only entitle for share in the suit property. In view of death of defendant, the

plaintiff is the only legal heir of defendant. The impleading applicants have access to the family of defendant and they are strangers either to the family of defendant nor suit schedule property. In order to grab the properties left behind by defendant, instant application is filed hence, prayed to dismissal of the same.

4. Heard oral arguments both side.
5. Points that are arise for consideration -

POINTS

- 1). Whether the proposed applicants/ defendant no.2 to 4 are necessary and proper parties to the above proceedings and in their absence the suit cannot be adjudicated effectively?***
- 2). Whether the impleading applicants have made out grounds to allow IA No.VIII?***
- 3). What order?***

6. To the above points finding of this court is as follows-

- | | |
|-------------------|---|
| Point No.1 | : In the affirmative |
| Point No.2 | : In the affirmative |
| Point No.3 | : As per the final order
for the following |

REASONS

7. Point No.1 and 2:- These two points are interlinked hence taken up together for discussion.

The suit is for one partition and separate possession in respect of suit properties. The all the family members are necessary and proper parties to the proceedings. On perusal of contents of written statement, the defendant clearly denied the relationship of plaintiff with defendant's family, further more the defendant clearly stated about his family details in his written statement and also taken a plea of non-joinder of necessary parties to the proceedings. In view of the same, this court has also framed issue to that effect, when there is a clear denial of status of the plaintiff and relationship to the suit property. This court has to accept the version placed by the impleading applicant that they are the legal heirs of deceased defendant. Judgment reported in **(1995) 3 SCC 147 between 'Anil Kumar Singh v/s. Shiv Nath Mishra**, the Hon'ble court has observed as follows:-

'The condition precedent is that the Court must be satisfied that the presence of the party to be added, would be necessary in order to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the suit. To bring a person as party-defendant is not a substantive right but one of procedures and the Court has discretion

in its proper exercise. The object of the Rule is to bring on record all the persons who are parties to the disputes relating to the subject-matter so that the dispute may be determined in their presence at the same time without any protraction, inconvenience and the multiplicity of the proceedings may be avoided’.

8. The burden casted equally on the plaintiff and impleading applicants to prove their status with defendant and to the suit property. Admittedly the original defendant is no more, hence in order to adjudicate the matter effectively, this court feels presence of impleading applicants in the above suit is very much essential and they are necessary and proper parties to the proceedings. This court can come to conclusion at this stage itself in deciding the real lis between the parties, which needs full pledge trial. Hence this court proceed to answer point No.1 and 2 in the affirmative.

9. Point No.3:- For the reasons stated above to the point No.1 and 2 this court proceed to pass following

ORDER

IA No.VIII filed under order 1 rule 10(2)
read with section 151 of Code of Civil
Procedure by the impleading applicants is

hereby allowed on cost of Rs.500/- payable to the proposed defendants.

Consequently, the impleading applicants are permitted to come on record as defendant No.2 to 4.

The plaintiff shall carry out necessary amendment in the cause title to the plaint within 14 days from today and file amended plaint in the next date of hearing.

(Dictated to the Stenographer directly on computer, typed by her, then script corrected by me and pronounced in the open Court dated this 15th day of April- 2025)

(SATISHA M.)
Civil Judge & JMFC, Laxmeshwar,