

IN THE COURT OF CIVIL JUDGE AND JMFC.,

ARKALGUD

OS.No:239/2018

Plaintiffs : Parvathi & another.

V/s

Defendants : Chandregowda and others.

ORDER ON I.A.NO.1

The applicants have filed I.A.No.1 u/o 1 rule 10 of CPC to implead them as defendant No.5 and 6 in this suit.

The plaintiffs have filed their objections.

Perused the same.

Heard arguments.

The following points arise for my consideration.

1. Whether the applicants have made out sufficient grounds to allow I.A. No.1 ?
2. What order ?

My findings to the above points in the affirmative for the following:

: REASONS:

The plaintiff has filed present suit for the relief of partition and separate possession and such other reliefs.

The counsel for the applicants argued that the applicants are the wife and son of Swamygowda @ Veerabhadregowda who died on 14.08.2017 and they are the legal heirs of deceased Swamygowda @ Veerabhadregowda.

The plaintiffs without making parties in this suit filed the partition suit against other legal heirs of deceased Javaregowda.

Being the legal heirs of deceased Swamygowda @ Veerabhadregowda they have also share over the

schedule property and the said fact came to knowledge of the applicants recently, therefore, they have filed the present application to implead as defendants in this suit. Hence, prayed to allow the application.

On the other hand the counsel for the plaintiffs disputed the relationship of the applicants with the parties of the suit and Swamygowda and further argued that the said Swamygowda died without legal heirs, therefore, prayed to reject the application.

Perused, the materials available on record and documents furnished by the applicants along with memo dated 16.02.2021. The applicants have stated that they have the legal heirs of deceased of Swamygowda @ Veerabhadregowda, accordingly, in order to show the relationship with the Swamygowda @ Veerabhadregowda have furnished copy of the Aadhaar card of the applicant, copy of the SSLC marks card of applicant NO.2 and notarized of the death certificate of Veerabhadregowda.

In the present case no doubt the plaintiffs are the master of suit and they cannot compel to implead the applicants as defendants in the suit., but , at this stage it is necessary to perused order 1 rule 10(2) of CPC which reads as under:

10. Suit in name of wrong plaintiff.- (1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the Suit has been instituted through a bone fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the court thinks just.

(2) Court may strike out or add parties—The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions

involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where defendant added, plaint to be amended
—Where a defendant is added, the plaint shall, unless the court otherwise directs, be amended in such

The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party:

a. any person who ought to have been joined as plaintiff or defendant, but not added; or

b. any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the questions involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.

A “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court.

If a “necessary party” is not impleaded, the suit itself is liable to be dismissed. A “proper party” is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made.

If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff.

The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.

In the present case the applicants have come before the Court with application stating that they are the legal heirs of deceased Swamygowda @ Veerabhadregowda and produced copy of the Aadhar cards , copy of the SSLC marks of Sunil H.V., Copy of death certificate of Veerabhadregowda and affidavit in respect of geneological tree of Javaregowda and they are claiming that they are the wife and son of deceased Swamygowda @ Veerabhadregowda.

As stated supra at any stage of the proceedings, either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the persons added as a party to pass effective decree on considering the interest of the parties in respect of property as stated in the schedule.

The documents which are furnished by the applicant are prima facie disclose that they have interest in respect of schedule property, therefore, at this stage, it is necessary to implead them in this suit and if the said applicants have impleaded in the suit no hardship would be caused to the plaintiff and defendants in this suit, therefore, in order to provide an opportunity to the applicant this court come to the conclusion that the applicants have made out sufficient grounds to implead them as defendant No.5 and 6 in this suit. Hence, this court answer Point No.1 in the Affirmative.

Point No.2: For the forgoing reasons, this court proceeds to pass following:

ORDER

I.A.No.1 filed by the applicants u/o 1 rule 10 of CPC is hereby allowed.

The applicants have impleaded as defendant No.5 and 6 in this suit and they are permitted to file their W/S.

For amendment

Call on 07-09-2021.

Civil Judge & JMFC.,
Arkalgud.

