

Order on IA No.11

When the case is posted for defense evidence, the plaintiff No.2 has filed this application dated:30.06.2023.

2. This is the application is filed by the plaintiff No.2 U/o 1 Rule 10(2) of CPC for impleading proposed defendant as defendant No.5 in this suit.

3. In the affidavit annexed to the application it is stated that, the plaintiffs have filed this suit against the defendants for the relief of partition and separate possession of the suit property. The suit schedule property is an ancestral and joint family property of plaintiffs and defendants. Due to lack of information, the proposed defendant is not impleaded in the suit and the proposed defendant is the 2nd wife of the father of the plaintiff No.2 and the mother of defendant No. 2 to 4. Hence, the proposed defendant is very much necessary party to the suit to adjudicate the

matter properly and conclusively. Hence, prayed to allow the application in the interest of justice and equity.

4. On the other hand, proposed defendant No.5 has filed objection and contended that, the application filed by the plaintiff No.2 is not maintainable either in law or on facts and facts stated in the affidavit are all false. Defendant No.5 is not a necessary party to the suit and the proposed defendant is the 2nd wife of father of the plaintiff No.2 and there are no properties standing in the name of proposed defendant. The plaintiff No.2 has filed this application to waste the Court time. Hence, prayed to dismiss the application in the interest of justice and equity.

5. Heard the arguments of both side.

6. Points for my consideration.

1. Whether application deserves to be allowed?
2. What order?

7. Answer to the above point are as under:

Point No.1: In the Negative

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

REASONS

8. **Point No.1.** I have already narrated the facts and circumstances of the affidavit annexed to I.A.No.11 and objection filed by the proposed defendant No.5.

9. By perusal of records, the plaintiffs have filed this suit against the defendants for the relief of partition and separate possession with respect to the suit schedule property as stating that, the suit schedule property is ancestral property and joint family property of family of plaintiffs and defendants. During life time of 1st wife i.e., plaintiff No.1, Hanumashetty was got married proposed defendant No.5 and 2nd marriage of Hanumashetty and proposed defendant No.5 is not valid and such marriage has no sanctity in the eye of law. 2nd wife

of Hanumashetty has no right and interest over either ancestral property or joint family property and 2nd wife does not come under class I legal heir. Hence, the proposed defendant is not necessary party to the present suit and even the proposed defendant is impleaded, this Court would not allot share to the proposed defendant. Therefore, point No.1 is answered in the negative.

10. Point No.2: As per the following:

Order

I.A.No.11 U/o 1 Rule 10(2) of CPC filed by the applicant/plaintiff No.2 is hereby dismissed.

For defense evidence

2nd Addl. Civil Judge & JMFC.,
Arkalgud.