

IN THE COURT OF SENIOR CIVIL JUDGE AND J.M.F.C.
AT ARSIKERE

: PRESENT :

Smt. E. Chandrakala, B.Sc, LLB.,
Senior Civil Judge & JMFC,
Arsikere.

DATED ON THIS THE 10th DAY OF FEBRUARY 2016

ORIGINAL SUIT No.14/2014

Plaintiffs/
Applicants : 1) B.M. Sadashivappa
S/o Late Mulappa B.M.,
Aged about 70 years, R/o No.33,
4th Cross, 2nd Main, B.K. Nagar,
Yeshwantpur, Bangalore and
others.

(By Sri PV/KLS, Advocate)

-V/s-

Defendants/
Opponents : 1) N.P. Vijayakumar
S/o Late N. Padadappa,
Aged about 61 years,
R/o Channakeshava Nilaya,
Shanti Marg, Opp: Panchamukhi
Ganapathi Temple, Maruti Nagar,
Arsikere and others.

(By Sri HSK, KAR, NAP, NDP & OAS, Advocates)

ORDERS ON I.A.No.XIII

The plaintiffs have filed I.A.No.XIII under order 1 rule 10(2) of CPC seeking permission to implead the proposed defendants as defendants 16 and 17 in the suit.

2. On the other hand, the proposed defendants filed objections. The other defendants have not filed objections to the I.A.

3. I have heard the arguments on both sides.

4. I have perused the I.A., Affidavit, objections and other material placed on record.

5. In the light of the above material on record, the points that arise for my consideration are:

1) *Whether the plaintiffs have made out sufficient reasonable grounds to allow I.A.No.XIII filed under order 1 rule 19(2) of CPC?*

2) *What order?*

6. My findings to the above points are as follows:

Point No.1 : In the Negative

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

7. **Point No.1:** It is stated in the annexed affidavit of IA that the plaintiffs have filed the suit against the defendants for partition and for separate possession of their legitimate share in respect of schedule properties. During the pendency of the suit, the defendants 14 and 15 were impleaded in the suit. Further, recently the plaintiffs came to know that the 1st defendant has sold some of the properties in favour of proposed defendants. The plaintiffs intend to include the properties which have been omitted. The plaintiffs obtained the certified copies

of the sale deeds which are executed in favour of proposed defendants. Hence, the presence of proposed defendants is necessary and also proper to adjudicate the controversy between the parties. Hence, they pray for allow of I.A.

8. Per contra, the proposed defendants contended that the application is not maintainable either in law or on facts. It is contended that the proposed 17th defendant had purchased the property bearing assessment No.1116 from its previous owner 1st defendant. The plaintiffs have also filed affidavit in regard to the same. That such being the case, there is no application filed by the plaintiffs is barred by Article 109 of the Limitation Act. Hence, the present proposed defendants are not necessary and proper parties to the suit. Thus, they pray for dismissal of I.A.

9. On careful perusal of the pleadings of the parties, which would goes to show that the suit is one for partition and separate possession in respect of schedule properties. The defendants 13 and 15 are the purchasers of some of the properties and 1st defendant is only contesting defendant. It further reveals that the suit is set down for leading evidence on defendants' side. At this stage, the plaintiffs filed the application seeking permission of this Court to implead the purchaser of some of the properties belongs to the joint family.

10. It is pertinent to note that as per the averments made in the annexed affidavit to I.A. that the

1st defendant sold some of the properties in favour of proposed defendants, which ought to have been included in the suit. The plaintiffs have not disclose the details of the properties which were sold in favour of proposed defendants by the 1st defendant. Unless and until the properties are included in the suit, the interest of the proposed defendants over the said properties will not arise and there is no cause of action against the proposed defendants. As such, at this stage, the application filed by the plaintiffs is premature one. Therefore, I have reached to the conclusion that I do not find any sufficient grounds to implead the proposed defendants in the suit as defendants 16 and 17. Thus, I answer the above point No.1 in the negative.

11. **Point No.2:** In view of my findings on point No.1, I proceed to pass the following:

ORDER

I.A.No.XIII filed by the plaintiffs
under order 1 rule 10(2) of CPC is
hereby dismissed.

No order as to costs.

(Dictated to Stenographer, transcribed by him, corrected and
then pronounced by me in open Court on this 10th day of
February, 2016)

(E. Chandrakala)
Senior Civil Judge & JMFC,
Arasikere.