

KAHS600005882023



Presented on : 25-07-2023

Registered on : 25-07-2023

Decided on : 02-02-2026

Duration : 02 years, 06 months, 07 days

**IN THE COURT OF SENIOR CIVIL JUDGE
& J.M.F.C., CHANNARAYAPATNA**

PRESENT: ARUNA KUMARI A

B.A. (Law), L.L.B., L.L.M.,

**SENIOR CIVIL JUDGE
CHANNARAYAPATNA**

DATED ON THIS 2nd DAY OF FEBRUARY 2026

FDP.No.9/2023

Plaintiff : Smt.Dakshayini

V/s

Defendant : Sri.Kalegowda

Parties to IA

Applicant/ : Smt.Sumithra
Proposed
respondent No.2

V/s

Opponent/ : Smt.Dakshayini
Petitioner

ORDER

The applicant/proposed respondent No.2 has filed instant application under Order 1 Rule 10 of CPC seeking to implead her as respondent No.2 in the instant case.

2) In the affidavit it is stated that, the petitioner has filed petition seeking for final decree with respect to preliminary decree passed in O.S.No.91/2014. The respondent is the father of applicant. The applicant along with defendant No.2 and 3 in O.S.No.91/2014 are children of respondent born through his second wife namely Susheelamma. But the petitioner has obtained the decree fraudulently in O.S.No.91/2014 without making her as a party to the suit. Hence, she is necessary party to the instant petition as she is one of the daughter of respondent. Hence, filed instant application.

3) On the contrary petitioner has filed objection and submitted that, as per judgment in O.S.No.91/2014 she is not entitled for share over the suit schedule property and more over the applicant and other defendants in O.S.No.91/2014 are the illegitimate children of respondent and as such the suit schedule properties are ancestral properties and they are not entitled for legitimate share over the suit schedule properties. Hence, prayed to dismiss the application.

4) Heard the arguments of the counsel for both sides and perused the materials on record.

5)The points that arise for my consideration are :

1. Whether is it just and necessary to implead the applicant as respondent No.2 in the instant case ?

2. What order?

6) My findings on the above points are as under:

Point No.1: In Negative

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

-.REASONS:-

7) **Point No.1:-** The materials reflect that, the petitioner has filed suit for partition with respect to suit schedule properties. On perusal of judgment in O.S.No.91/2014 as well as R.A.No.45/2020, it is clear that the court has given findings that, the mother of impleading applicant is a second wife of Kalegowda. The children begotten by defendant No.1 through second wife during lifetime of first wife is to be considered as illegitimate children. As per Sec.16(3) of Hindu Marriage Act they are entitled for share only in separate property of defendant No.1 and by birth they cannot have any claim over the ancestral properties.

8) Section 16(3) of the Hindu Marriage Act reads as under;

Section 16(3) of the Hindu Marriage Act, 1955, limits the property rights of children born from void/voidable marriages (considered legitimate via 16(1)/16(2)) solely to their parents' property, excluding coparcenary or ancestral property. Such children cannot claim rights in property of other relatives.

Key details regarding Section 16(3) of the Hindu Marriage Act:

- **Limited Inheritance:** *Children from void or voidable marriages, while deemed legitimate, are only entitled to the self-acquired property of their parents and not to ancestral or coparcenary property.*
- **No Right in Joint Family Property:** *These children do not have a right to share in coparcenary or joint family property; they are not considered part of the coparcenary.*
- **Inheritance Timing:** *The rights to the parent's property are generally available only through succession after the death of the parent.*
- **Legal Position:** *Although initially restricted, the 2011 Supreme Court decision in *Revanasiddappa v. Mallikarjun* and subsequent 2023 rulings clarified that these children have rights to the parents' property (whether self-acquired or inherited by the parent), but still cannot claim shares in a broader Hindu Undivided Family (HUF).*

9) Since plaintiff and her father both are alive and as per Amended Hindu Succession Act, plaintiff is to be considered as co-parcener by birth under Sec.6 of Hindu Succession Act.

Since the plaintiff is the only legitimate daughter of defendant No.3, she is entitled for 1/2 share in all the suit schedule properties except suit item No.5 for which no documents have been produced. The applicant has not made any genuine ground to allow the application. If application is allowed it is nothing but prolong of the case by that time parties would be put into greater hardship. Since the applicant has not established sufficient grounds to implead her as respondent No.2, I answer **Point No.1 is in Negative.**

10) **Point No.2:** For the reasons discussed above, I proceed to pass the following;-

ORDER

Application which is filed by the applicant under Order 1 Rule 10 of CPC seeking impleading of her as respondent No.2 is hereby dismissed/rejected.

(Dictated to the stenographer directly on computer, typed by her, corrected and then pronounced by me in the open court on this 2nd day of February 2026)

(ARUNA KUMARI A)
Senior Civil Judge and JMFC
Channarayapatna