

**ORDER ON I.A.NO.7 FILED BY THE PLAINTIFF NO.1 UNDER ORDER
I RULE 10 OF CODE OF CIVIL PROCEDURE.**

I.A.No.7 filed by the plaintiff No.1 under Order I Rule 10 R/w section 151 of C.P.C. seeking to implead proposed defendant No.11 and 12 as defendant No.11 and 12.

The proposed Defendant No.11 and 12 are as follows:

**11. Ningamma D/o Nagappa,
W/o Marikempegowda,
Aged about 64 years
Sugganahalli koppalu village
Shravanabelagola hobli,
Channarayapatna Taluk.,
Hassan District.**

**12. Devamma D/o Nagapappa
W/o Ramegowda,
Aged about 62 years,
Sasalukoppalu village,
Kikkeri Hobli, K.R.Pete Taluk,
Mandya District.**

2. The application is supported by the affidavit of the Plaintiff No.1 and in her affidavit, she has stated that, plaintiffs have filed suit against the defendants for the relief of partition and separate possession of the suit schedule properties. Further stated that, when she verified the records of the rights of the item No.3 and 4 of the suit schedule property she came to know that, revenue records of the said properties jointly in the name of defendant No.1 and Nagappa. The said Nagappa and defendant No.1 purchased the item No. 3 and 4 of the suit schedule property bearing Survey No.13/4B measuring 8 guntas of land and property bearing Survey No.13/5B measuring 0.03 guntas of land jointly on 13-11-1961. Thereafter, item No.3 and 4 of the suit schedule property came to the plaintiffs and defendant's family. The said Nanjappa and his wife Doddamma died leaving behind his children who are the proposed defendants herein. The proposed defendants have no manner of right, title interest over the item No.3 and 4 of the suit property. The plaintiffs and defendant No.1 to 10 have been in peaceful possession and enjoyment of the suit property. But since

the revenue records of the item No.3 and 4 of the suit schedule property is in the name of Nagappa and defendant No.1 jointly, the proposed defendants re necessary parties to the suit. As such the proposed defendant No.11 and 12 are very much necessary and proper party to this suit. Hence, they prayed to allow I.A.No.1.

3. After service of the Notice on I.A. No.7 to the proposed defendant No.11 and 12, , the proposed defendant No.11 and 12 does not appear before the court. Hence they placed absent. Even after giving sufficient opportunities counsel for the defendants have not filed objection.

4. Heard plaintiff counsel & perused the materials.

5. The following points arise for determination:

POINTS

- 1. Whether Plaintiff No.1/ applicant has made out sufficient grounds for allowing the application?**
- 2. What order ?**

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

Point No.1 : In the **affirmative**

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

REASONS

7. **POINT NO.1:-** As per Order I Rule 10 of C.P.C., this Court is having power to add parties in the suit during the pendency of the suit at any stage. The law is settled on the point that the plaintiff is sole architect of his plaint. It is the plaintiff who has a right to choose his own adversary against whom he seeks a relief. It is well settled that any decree or order passed by a Court would not affect a person who is not a party in the suit or the proceedings. It is not always necessary to implead a person in a suit. Only it is settled that impleadment is necessary to avoid multiplicity of the suit. There must be such facts and circumstances to show that unless the person is impleaded in the suit or a proceeding, there is likelihood of further litigation in the same matter.

8. The suit filed by the plaintiffs against the defendants for the relief of partition and separate possession of the suit schedule properties. The plaintiff contended that item No.3 and 4 of the suit schedule property purchased by the defendant No.1 and Nagappa jointly on 13-11-1961. The said Nagappa and his wife by name Doddamma died leaving behind proposed defendant No. 11 and 12 . Therefore, the proposed defendants being the legal heirs of said Nagappa, they are necessary parties to the suit. If the proposed defendant No.11 and 12 are not made as party to the suit the plaintiff will be put to great loss and hardship. Therefore, the proposed and defendants are a proper and necessary party to the suit.

9. In this circumstances It is worth to refer decision of the **Hon'ble Apex Court in the case of Kasturi -Vs- Iyyamperumal and Others reported in (2005) 6 SCC 733**, wherein their lordships have held that, two test are to be satisfied for determining the question who is a necessary party. Test are (1) there must be a right to some relief against such party in respect of the controversies involved in the

proceedings; (2) no effective decree can be passed in the absence of such party. The plaintiffs have filed the present suit against the defendants for partition and separate possession. It is contention of the plaintiff that, Item No.3 and 4 of the suit schedule property purchased by the defendant No.1 and Nagappa jointly through sale deed. The proposed defendants are being the legal heirs of said Nagappa, they are necessary parties to the suit. The issue as to whether the proposed item No.3 and 4 are the joint family properties of the plaintiffs and defendant No.1 to 10 or whether the proposed defendants have right, title or interest over the same is a matter of trial. If the proposed defendants are not added, the right of the plaintiff will be defeated. Thereby, applying the test laid down in the case of Kasturi (supra), the opponents are a necessary party to the present case. Accordingly, Court is of the opinion that, the proposed defendant No.11 and 12 are necessary party in order to adjudicate the controversy involved in the suit effectively and completely. Moreover, if the I.A. opponents impleaded as parties, no harm will be caused to other side, Therefore, court is of the opinion that the

plaintiffs have made out sufficient grounds to allow I.A.No.7. With these observations, Court answered point No.1 in the **Affirmative**.

10.POINT NO.2:- For the reasons assigned above,Court proceed to pass the following:

:: O R D E R ::

I.A.No.7 filed by the plaintiff No.7 under Order I Rule 10(2) R/w section 151 of C.P.C. is hereby allowed.

The opponents are made as defendant No.11 and 12 in the suit.

The plaintiff is hereby required to carry out the amendment of the plaint and furnish the amended plaint forthwith.

No order as to costs.

(Dictated to the stenographer on-line to the computer and typed by her, corrected, signed and then pronounced by me in open court on 06th day of April 2024.)

(Suneeta)

III Addl.Civil Judge and J.M.F.C.

Channarayapatna.