

KAHS610001302005



**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC, AT
CHANNARAYAPATNA**

PRESENT:- Sri. DEEPU B.C., B.A.L., LL.B.,
Prl. Civil Judge & JMFC,
Channarayapatna.

Dated this the 10th day of January 2025

F.D.P. No.8/2005

Petitioner/s : Jayamma and others

V/s

Respondent/s : Nagaraju & others

PARTIES TO I.A. No.7

Applicant/s :- B.N. Ramegowda S/o B.T. Nanjappa,
Aged about 65 years,
R/o Baralu village, Kasaba Hobli,
Channarayapatna Taluk,
Hassan district.

V/s

Opponent/s :- Jayamma and others

ORDER ON I.A. No.7

The instant application is filed by the applicant by name B.N. Ramegowda S/o B.T. Nanjappa U/o.1 Rule 10 of CPC on 20-02-2024 praying to implead him as a party in the proceedings.

2. In support of the application affidavit is filed, wherein, the applicant has sworn to fact that the petitioners and respondents have colluded each other and got filed a suit in O.S. No.5/1994 including his property. One Thopegowda is the propositus of the petitioners and he got three children namely; B.T. Thimmappa, B.T. Nanjappa and B.T. Shivappa. The petitioners are the legal heirs of one Thopegowda, who is the second son of B.T. Shivappa and they have filed a suit against the respondents for the relief of partition and separate possession. There was a partition between three children of propositus Thopegowda on 10-07-1979, thereafter the B.T. Nanjappa and B.T. Shivappa got divided their properties on 15-06-1981 and said B.T. Thimmappa got 5 children and during the life time of B.T. Thimmappa, he has gifted Item No.7 property in favor of his third son Bommegowda on 21-06-1974 and said Bommegowda has sold the same in favor of applicant's father B.T. Nanjappa under the registered Sale Deed on 14-07-1987. In pursuance to the same, the applicant's father got changed the katha into his name, but he died during the year 2004. After his demise, being his son,

the applicant has got changed the katha into his name under M.R. No.27/2006-07. In spite of that the children of B.T. Thimmappa have not questioned the said Sale Deed and they have impleaded the said property and filed the suit without impleading him as a party. Hence, the applicant has filed an application U/o.21 Rule 97 of C.P.C. but same came to be dismissed and he preferred an appeal and wherein, the applicant was granted liberty to file the present application. So, under these circumstances, it would be necessary to implead him as a party in the proceedings. Accordingly, he prayed to allow the application.

3. On the other hand, the counsel for the petitioners filed an objection by denying the entire averments made in the affidavit annexed to the application and contended that the proposed applicant has already filed an application U/o.21 Rule 97 of C.P.C. as I.A. No.4 on 09-03-2022 and same came to be dismissed vide order dated 29-08-2022. In spite of that he again come up with this same application. Further, the proposed applicant has filed a suit in O.S. No.465/2017 against the petitioners for the relief of declaration and prohibitory permanent injunction and same is pending for adjudication. In spite of that in order to cause delay to the proceedings, the applicant again come up with this false application and same is not maintainable and liable to be rejected. Accordingly, they prayed to reject the application.

4. Heard the arguments on both sides and perused the materials on record.

5. The points that arise for consideration of this court are as under :

1. *Whether the applicant has made out sufficient grounds to implead him as an additional party in this proceedings ?*

2. *What order?*

6. The answers to the above points are as here under:-

Point No. 1 :- **In the Affirmative**

Point No. 2 :- As per final order.

For the following :

:: REASONS ::

7. **Point No.1** :- As could be seen from the record, the instant petition has been filed by the petitioners against the respondents for drawing a final decree in pursuance to the preliminary decree in O.S. No.5/1994 and R.A. No.15/2007. During the pendency of the proceedings, the present applicant has filed I.A. No.3 U/o.21 Rule 97 of C.P.C. but said application came to be rejected. Being aggrieved by the said order, he preferred an appeal in R.A. No.10/2022 and same came to dismissed vide Judgment dated 05-10-2023, but the

present applicant was at liberty to move an application U/o.1 Rule 10 of C.P.C. before this court and this court was directed to dispose off the application in accordance with the Law. In pursuance to the said order, the applicant has come up with this application.

8. As per the applicant, one Bommegowda S/o Thimmappa, who is the family member of the petitioners and respondents has sold Item No.7 property in favor of his father under the registered Sale Deed dated 14-07-1987. In pursuance to the same, his father got changed the katha into his name and after his demise, being his son the applicant has got changed the katha into his name under M.R. No.27/2006-07. But without impleading him, the petitioners and respondents got filed a suit in O.S. No.5/1994 and got the decree including Item No.7 property. Though the petitioners have denied the claim of the applicant, they have asserted that the previous application filed by the applicant came to be dismissed and again the applicant has come up with the same application. But as stated above, previously the applicant has filed an application U/.21 Rule 97 of C.P.C. and same came to be dismissed, but he was at liberty to file an application U/o.1 Rule 10 of C.P.C. as per the Judgment passed by the Hon'ble Senior Civil Judge, in R.A. No.10/2022.

9. Further, in order substantiate his claim, the applicant has filed copy of palu patti, M.R. extract, copy of Sale Deed and E-katha extract. On careful perusal of the same, it prima facie appears that Item No.7 property stands in the name of applicant. So, under these circumstances, the applicant also necessary party to the proceedings. If at all the applicant is not made as party to proceedings, the issue between the parties cannot be adjudicated properly and effectively. Moreover, the rights of the applicant over the Item No.7 property can be adjudicated only after conducting the trial. At this juncture, there is a prima facie materials to implead the proposed applicant as a party to the suit. Hence, this court is of opinion that the applicant has made out sufficient grounds to implead him as an additional party in the proceedings. Thus, point No.1 is answered in the '**Affirmative**'.

10. **Point No. 2** : In the light of forgoing discussion, this court proceeds to pass the following:

ORDER

I.A.No.7 filed by the applicant U/o.1
Rule 10 of CPC is hereby allowed.

The applicant is hereby permitted to
implead himself as respondent No.5 in the
petition.

The petitioners shall carry out the amendment to the petition.

(Dictated to the stenographer, transcription typed by her, corrected signed & then pronounced by me in the open court on this **10th day of January 2025.**)

(Deepu B.C.)
Prl. C.J. & JMFC,
Channarayapatna.