

KAHS610027782023



**IN THE COURT OF II ADDL CIVIL JUDGE AND JMFC
AT CHANNARAYAPATNA, HASSAN
Presided Over by SUNEETA**

PRESENT:- Smt. **SUNEETA** ., B.A., L L B.,
II Addl. Civil Judge & JMFC,
Channarayapatna.

Dated 16th day of August 2025

FDP/28/2023

Petitioner : 1. Shanthamma W/o late Ningegowda
aged 50 years

2. B.N. Bhavya W/o Santhosh
aged 21 years
Byadarahalli village
Baguru Hobli
Channarayapattana Taluk
Hassan District.

(By Sri. **B.K.V**, Adv.)

V/s

Respondents:

Boregowda S/o Boregowda
aged 55 years
Byadarahalli village

Baguru Hobli
Channarayapattana Taluk
Hassan District.

(R1 absent
R2 by Sri. N.S.T Adv.)

ORDER ON I.A.NO.II FILED BY THE APPLICANT
UNDER ORDER I RULE 10 R/W SECTION 151 OF
CODE OF CIVIL PROCEDURE.

I.A.No.2 filed by the Applicant/ Proposed Respondent No.2 under Order I Rule 10 R/w section of C.P.C. seeking to implead proposed Respondent No.2 as Respondent No.2.

The proposed Respondent No.2 is as follows:

“ APPLICANT”
Sri. Byregowda
S/o Boregowda
Aged about 40 years
R/o Byadarahalli village
Bagur Hobli
Channarayapattana Taluk

2. The application is supported by the affidavit of the applicant and in his affidavit, he has stated that,

petitioners herein have filed this petition for final decree proceedings. It is stated that Proposed Respondent No.2 is the son of respondent No.1, but at the time of filing the suit, the Plaintiffs/petitioners have not arrayed him as parties to the suit and obtained the collusive preliminary decree. The respondent No.1 and petitioners have colluded with each other have filed suit for the relief of partition and separate possession of the petition schedule properties. Further stated that, petition schedule properties are joint family properties. He also has an undivided right over the petition schedule properties. As such the proposed Respondent No.2 is very much necessary and proper party to this suit. Hence, he prayed to allow I.A.No.2.

3. The learned Counsel for the petitioner filed objection to I.A No.2 stating that the averments made in the application is false, frivolous and not maintainable either under law or on facts. Further contended that, the

petitioners herein have filed suit in O.S No.18/2022 before this Court. In the said suit, the respondent has appeared before the Court, but he has not filed written statement. Further contended that, respondent have two wives. 1st wife by name Dyavamma has got 1 son namely Bairegowda and 2nd wife has got 1 son namely Laksmeesha Gowda(Manu). The petitioner has no objection to giving the share to the applicant that fell to the share of applicant's father. The applicant has filed this application only to drag the proceedings. Hence prays to dismiss the application.

4. Heard on both sides & perused the materials.

5. The following points arise for determination:

POINTS

1. Whether applicant has made out sufficient grounds for allowing the application?

1. 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:

R E A S O N S

7. POINT NO.1:- It is not in dispute the present applicant/proposed respondent No.2 is the son of respondent No.1. It is also not in dispute that the Petitioners have filed OS No.18/2023 for partition and separate possession in respect of the suit schedule properties and this Court decreed the said suit and drawn the preliminary decree. The applicant/proposed respondent No.2 contended that, respondent No.1 is his father. The petition schedule properties are joint family properties. The applicant has a right over the petition schedule properties.

8. Now the question is whether the applicant can be impleaded as a respondent No.2 after passing of the

preliminary decree?. Order 1 rule 10 of CPC provides that a necessary party can be impleaded in the suit 'at any stage of the proceedings'. In a suit for partition until and unless the final decree is passed the suit is not disposed of. Thus the suit remains pending after passing of the final decree and the stage would be covered within the expression 'at any stage of proceedings' as enunciated in order 1 rule 10 of CPC. Further more there is no prohibition in passing more than one preliminary decree in a suit. By considering the facts and circumstances of the case, Court is of the opinion that the proposed Respondent No.2 is necessary party to the petition. If the proposed Respondent No.2 is not added, the right of the Respondent No.2 will be defeated. Thereby, the applicant is a necessary party to the present case. Accordingly, Court is of the opinion that, the Respondent No.2 is necessary party in order to adjudicate the controversy involved in the petition effectively and completely. Moreover, if applicant is impleaded as party, no harm will be

caused to other side, Therefore, court is of the opinion that the applicant has made out sufficient grounds to allow I.A.No.2. **With these observations, Court answered point No.1 in the Affirmative.**

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

:: O R D E R ::

I.A.No.2 filed by the Applicants/ proposed Respondent No.2 under Order I Rule 10 R/w Section 151 of CPC is hereby allowed.

The applicant is made as Respondent No.2 in the petition.

The petitioner is hereby required to carry out the amendment of the petition and furnish the amended petition forthwith.

No order as to costs.

(Dictated to the Stenographer directly on computer, typed by her, corrected and then pronounced by me in open court on this **16th day of August 2025.**)

(SUNEETA)
II Addl. C.J. & JMFC,
Channarayapatna.