

ORDER ON I.A. No.16

The instant application is filed by the plaintiff U/o.1 Rule 10(2) of C.P.C. on 15-12-2023 at the stage of arguments on merits seeking permission to implead the proposed defendant No.10(a) to (e) and defendant No.11 in the suit.

2. In support of the application, affidavit is filed, wherein, the plaintiff No.3 has sworn to fact that the plaintiffs have filed this suit against the defendants for the relief of partition and separate possession. The proposed defendant No.10(a) to (e) are the children of third daughter deceased Varalakshmi of his grand-father Marigowda. The proposed defendant No.11 is the 7th daughter of deceased Marigowda. Though the proposed defendants are the family members of deceased Marigowda, due to oversight and in advertance, they have not been made as parties to the suit and said fact is came to his knowledge while preparing the arguments on merits. Hence it would require to implead the proposed defendants in the suit for proper adjudication of the matter in dispute. Accordingly, he prayed to allow the application.

3. In pursuance to the said application, notice has been issued to the proposed defendants but inspite of service of the same, they did not choose to appear before the court, hence objection on behalf of the proposed defendants was taken as closed and matter was posted for arguments.

4. Heard the arguments on plaintiffs' counsel and perused the materials on record.

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

1. Whether the presence of proposed defendants are necessary for adjudication of the matter in dispute ?

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 suit has been filed by the plaintiffs against the defendants for the relief of partition and separate possession. The defendants are contesting the case and both parties have lead their evidence and when the matter was posted for arguments on merits, the plaintiff has come up with this application. As per the plaintiffs, the proposed defendants are the legalheirs of the deceased Marigowda but due to oversight, they have not been impleaded as a parties to the suit. Hence, he intends to implead them as a parties in the suit. But inspite of service of the notice, the proposed defendants have not appeared before the court. On careful perusal of the written statement filed by the defendants, they have not taken a specific defence that since the plaintiff has not made all the family members in the suit. The suit of the plaintiffs is bad fro non-joinder of necessary partis. Though the defendants have said contention at the time of written satement and specific issue has been framed by this court in the year 2015 itself. The plaintiffs have not made any efforts to implead the necessary parties to the suit and when the matter was posted for arguments on merits, the plaintiff has come up with this application.

8. It is settled principles of Law that in a suit for partition all the family member or L.Rs or coparceners should be made as a parties. Even the parties have not joined all the members of the family in the suit, the court can direct the parties to implead all the necessary parties to the suit. So, under these circumstances it would appropriate to permit the plaintiffs to implead the proposed defendants in the suit. Admittedly, the plaintiffs have come up with this application at belated stage, but however, the delay is not a sole ground to reject the claim of the plaintiffs. If the application is not allowed, it leads to multiplicity of the proceedings and the matter in dispute cannot be adjudicated in proper manner. So, under these circumstances, this court is of opinion that the plaintiff has made out sufficient grounds to allow the application. Thus, point No.1 is answered in the '**Affirmative**'.

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

ORDER

I.A.No.16 filed by the plaintiff U/o.1
Rule 10(2) of C.P.C. is hereby allowed.

The plaintiff is permitted to implead the proposed defendant No.10(a) to (e) and defendant No.11 in the suit.

No order as to costs.

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