

IN THE COURT OF CIVIL JUDGE AND JMFC AT  
HOLENARASIPURA

Present:- Sri. Chandrashekhara.P.Diddi, B.A., LL.B,  
Civil Judge and J.M.F.C,  
Holenarasipura.

Dated this the 17<sup>th</sup> day of October, 2015

**O.S.No.134/2008**

Between

Rani and others : Plaintiffs

(By Sri.B.N.R.,Adv.,)

V/s

Chikkamallamma and others : Defendants

(D1 & 2 By Sri.P.D.O.,Adv.,  
D3, 6 & 11 By Sri.H.S.A.,Adv.,  
D12 By Sri.R.S.,Adv.,)

**ORDERS ON IA-XVI & XVII**

Drakshayini : Applicant

V/s

Rani and others : Plaintiffs

**ORDERS ON IA-XVI & XVII**

The applicant has filed IA.No.XVI under order 22 rule 9 of  
C.P.C prays for set abatement order and IA.No.XVII under order 22  
rule 2 and 4 R/w 151 of C.P.C prays for permission to come on record  
as the legal heir of the defendant no.4.

2. In the accompanying affidavit of IA's the applicant submitted that the plaintiffs have filed the suit for partition and separate possession. The defendant no.4 died on 25/02/2015. The applicant is the foster daughter to the defendant no.4. Hence prays for impleading her as the legal heir of the defendant no.4. Further submitted that she has filed this application belatedly. Hence prays for set aside the abatement order. Accordingly prays for allowing the applications.

3. The plaintiffs counsel filed common objection to the applications. In the objection the plaintiffs submitted that the applications are not maintainable either in law or on facts of the case. The applicant is not the legal heir of the deceased defendant no.4. She has not at all produced any documentary evidence to show that she is the legal heir of the deceased defendant no.4. In order to get the property of the defendant no.4, she has filed false applications. Hence prays for dismissal of the applications.

4. Heard the argument of both the counsels.

5. The point that arises for my consideration is as follows.

**1. Whether the applicant has produced sufficient documents to show that she is the legal heir of the deceased**

**defendant no.4 and the applications  
are deserves to be allowed?**

**2. What order?**

6. I answer the above point is as follows.

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

**Point No.2:-** As per the final orders for  
the following reasons.

**REASONS**

7. **Point No.1:-** I have gone through the plaint averments. The plaintiffs have filed the suit for partition and separate possession. After filing of the suit the defendant no.4 appeared in this case and filed the written statement. Further in the application the applicant submitted that the defendant no.4 died on 25/02/2015. She is the foster daughter to the defendant no.4. Hence prays for impleading her as the legal heir of the deceased defendant no.4. In this regard the applicant has produced the true copy of the marriage invitation card and election voter card. On perusal of the true copy of the marriage invitation card it is mentioned as Drakshayini is the adopted daughter of K.M.Somashekhara. The present defendant no.4 is the wife of K.M.Somashekhara. But the applicant in the application submitted that she is the foster daughter to the defendant no.4. But the marriage invitation card discloses that she is the adopted daughter of K.M.Somashekhara. Except the invitation card the applicant has not

produced any other document to show that she is the foster daughter to the deceased defendant no.4 and how she is related to the defendant no.4. Further it is relevant to discuss the written statement filed by the defendant no.4. In the written statement the defendant no.4 categorically submitted as under.

1ನೇ ಪ್ರತಿವಾದಿಯ ಗಂಡ ಎಂ.ಮಹದೇವಯ್ಯ ಬದುಕಿರುವಾಗಲೇ ಒಬ್ಬ ಸಾಕು ಮಗಳನ್ನು ಸಾಕಿಕೊಂಡು ವಿದ್ಯಾಭ್ಯಾಸ ಕೊಡಿಸಿ ಆಕೆಗೆ ಲಗ್ನಮಾಡಿರುತ್ತಾನೆ. ಆಕೆಯ ಹೆಸರು ದ್ರಾಕ್ಷಿಯಿಣಿ ಎಂದು ಇರುತ್ತದೆ. ಈಗ ಆಕೆ ದ್ರಾಕ್ಷಿಯಿಣಿ ಕೋಂ ಕೆ.ಬಿ.ಸತ್ಯಮೂರ್ತಿ, ಕಂಪ್ಲಾಪುರ ಗ್ರಾಮ, ರಾವೂಂದೂರು ಹೋಬಳಿ, ಪಿರಿಯೊಪಟ್ಟಣ ತಾಲ್ಲೂಕು, ಮೈಸೂರು ಜಿಲ್ಲೆ ಇಲ್ಲಿ ವಾಸವಾಗಿರುತ್ತಾರೆ.

Therefore in the written statement the defendant no.4 never admits that the present applicant is the adopted daughter and further stated that the applicant is the foster daughter to the M.Mahadevaiah. Therefore the document produced by the applicant not shows how the applicant is related to the deceased defendant no.4. Further the applicant not produced the document to show that she is the adopted daughter to the M.Somashekhara.

8. Further on perusal of the election voter card it is mentioned as Drakshayini Father's/Mother's/Husband's name is mentioned as Somachandru. Therefore the election voter card also not shows how

the applicant is related to the deceased defendant no.4. In this regard I would like to rely on the Hon'ble High Court decision decided between Shakuntala Samantha V/s Anjan Chakraborty and others. In the said decision the Hon'ble High Court held that

A foster child need not be the real legitimate child of the person who brings him up. She is essentially the child of another person but she is nursed, reared and brought up by another person as his own daughter.

Herein this case the applicant has not at all produced any documentary evidence to show that she is the nursed, reared and brother up daughter by the defendant no.4 or her husband. Therefore the applicant has not produced prima-face document to show she is the legal heir of the deceased defendant no.4. Therefore on the basis of documentary evidence produced by the applicant it is forthcoming not that how the applicant is the legal heir to the defendant no.4. Therefore the plaintiff has not produced prima-facie document to show that she is the legal heir of the deceased defendant no.4. When the applicant is not the legal heir of the deceased defendant no.4, the order in respect of setting aside the abatement order cannot be considered. Therefore the application filed by the applicant is liable to be dismissed. Accordingly I answer the above point in the negative.

9. **Point No.2**:- For the above stated reasons I proceed to pass

the following order.

**::O R D E R::**

**IA. No. XVI filed by the applicant under order 22 rule 9 of C.P.C and IA. No. XVII filed under order 22 rule 2 and 4 R/w 151 of C.P.C are hereby dismissed.**

**No order as to cost.**

(Dictated to stenographer and transcribed by her revised and corrected by me then pronounced in the open court dated this 17<sup>th</sup> day of October, 2015)

**(Chandrashekhara.P.Diddi)  
Civil Judge and J.M.F.C,  
Holenarasipura.s**