

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 another : 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-XVIII & XIX**

K.S.Shivappa : Applicant

V/s

Rani and others : Plaintiffs

**ORDERS ON IA-XVIII & XIX**

The applicant has filed IA.No.XVIII under order 22 rule 4 of C.P.C prays for set aside the abatement order and IA.No.XIX under order 22 rule 4 and 9 of C.P.C prays for permission to on come on record as the legal heir of the defendant no.4.

2. In the accompanying affidavit of IA's the applicant submitted that he is the legal heir of the deceased defendant no.4. The defendant no.4 died on 25/02/2015. The defendant no.4 is the aunty to him. She died issue less. After the death of the defendant no.4 he has performed all the funeral ceremony of the defendant no.4. Hence prays for impleading him as the legal heir of the defendant no.4. Further submitted that he has filed this application belatedly. Hence prays for set aside the abatement order and also prays for impleading him as the legal heir of the defendant no.4 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. In order to get the property of the defendant no.4, he 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 he 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. In the application the applicant submitted that he has performed the funeral ceremony of the defendant no.4. Hence he is the legal heir of the deceased defendant no.4 and he has got right over the suit property. In this regard the applicant has produced the xerox copy of the affidavit executed by M.Shivaraju S/o Mylaraiah and death extract of Janaki and death ceremony card of Janaki. On perusal of the affidavit it reveals that the present applicant is the adopted son to the defendant no.4. But in this case the applicant has not produced any adoption deed to show that he is the adopted son to the defendant no.4 or the defendant no.4 husband taken him as the adopted son. Further it is relevant to note the cause title averments. In the cause title it is mentioned as Shivappa S/o M.Shivaraj. But it is not mentioned as Shivappa is the adopted son of Somashekhara. Further more in the

cause title it is mentioned as Shivappa S/o M.Shivaraju and not mentioned as Shivappa A/s M.Somahsekhar. Further on perusal of Ex.P20 it is the genealogical tree it reveals that the Mylariah has got 3 sons namely M.Mahadevaiah, M.Shivaraju, M.Somashekhar. The M.Mahadevaiah and M.Somashekhar have died issue less. The present applicant is the son of M.Shivaraju. Herein this case the applicant has not at all produced the relevant document to show that he is the adopted son to the defendant no.4. Therefore at this stage there is no documentary evidence to show that the applicant is the nearest legal heir to the deceased defendant no.4. The applicant submitted that he has performed the funeral ceremony of the defendant no.4, but mere performing the funeral ceremony, he is not the legal heir of the defendant no.4. Therefore at this stage the applicant has not produced any prima-facie material to show that he is the adopted son to the defendant no.4. Hence the document relied by the applicant is not at all helps him to prove that he is the adopted son to the deceased defendant no.4. Therefore on these grounds the application filed by the applicant is liable to be dismissed. Accordingly I answer the above point in the negative.

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

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

**IA. No. XVIII filed by the applicant under order 22 rule 4 of C.P.C and IA. No. XIX filed under order 22 rule 2 and 9 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**