

ORDERS ON APPLICATION FILED BY THE APPLICANT
UNDER ORDER 1 RULE 10(2) OF THE CODE OF CIVIL
PROCEDURE

The Applicant has sought to get himself impleaded in the present suit and it is contended that originally the propositus was one Thammannagowda who had Hucchegowda and Mallegowda as his two children; that Hucchegowda had Puttegowda who happens to be the father of the Defendants No.2 to 8; that Mallegowda had three children namely Thammannegowda, Ramegowda and Giddamma and that the Plaintiffs are the children of the 1st son of Mallegowda i.e. Thammannegowda. The Applicant has contended that Ramegowda died without any issues and that the Applicant is the son of Giddamma and as such has a right over the suit properties and despite Giddamma being reflected in the genealogical tree has been left out from the suit and as such he is required to be impleaded.

2. The Plaintiff would object to the said application contending that when the stage is set for further evidence of the Plaintiff, the present application has been filed; that Giddamma had married

one Puttegowda and was residing in Machagowdanahalli about 60 years back and had died around 4 years back and since the suit properties are the joint family properties of the Plaintiff and the 1st Defendant which have been purchased by the Plaintiff's uncle under a registered sale deed except the Plaintiff and the 1st Defendant nobody else have a right in respect of the said property and as such Giddamma or anybody claiming through her have not been arrayed as parties and that the application is time barred and as such requires to be rejected.

3. Having heard the learned counsel for the parties and perusing the record the points that arise for my consideration are as follows:-

1. Whether the impleading applicant is a proper and necessary party to the present suit?

4. My answer to the above point ***is in the Affirmative*** for the following:-

REASONS

5. The fact that the suit is one for the relief of partition has to be borne in mind before embarking on the present application. In a

suit for partition it is imperative that all family members and all family properties are included in the suit. That being the position in law and it is not disputed by the Plaintiff that Giddamma is also a family member being the daughter of Mallegowda S/o Thammannegowda. Once Giddamma is admitted to be a daughter, it is incumbent that she or anybody else being her heir are impleaded in the present suit. The fact that Giddamma married around 60 years back should not make a difference since if a right is vested in law in Giddamma her marriage or her subsequent demise would not take away the right vested. Ultimately it is a matter of trial as to whether Giddamma was indeed vested with a right or whether she would not get any share in the family properties. That cannot be a fetter for Giddamma or the present Applicant to come on record to represent the branch of Giddamma. It is also for this very reason that the contention of the Plaintiff that the suit properties are the properties of the Plaintiff and the 1st Defendant acquired through a sale deed over which nobody else can have a claim has to be rejected, since the entitlement of the parties to the family

properties is one that would have to be adjudicated after trial and not at this stage. So long as the applicant has prima facie established that his mother was also a family member, he would have to be held as a necessary party, having regard to the scope of the present suit. Hence I pass the following:

ORDER

The impleading Applicant is permitted to come on record. The Plaintiff shall amend the plaint and file amended plaint. Call on 24.05.2023 for amended plaint.

(PRAVEEN.R.J.S)
CIVIL JUDGE., HOLENARSIPURA.