

Heard arguments of Learned Counsel for plaintiffs and learned counsel for Prop.Defendant No.8 to 13 on I.A.No.1 and 4.

As far as I.A.No.1 is concerned, it is filed U/o.32 Rule 2 of CPC with a prayer to appoint Defendant No.2 as minor guardian of Defendant No.4, who is a minor. It is pertinent to consider that defendant No.2 has appeared through her counsel by filing the vakalath even on behalf of minor defendant No.4, has not at all filed objections to this application. This means, she has no objections to appoint her as next friend of Defendant No.4. Hence I.A.No.1 is allowed. Defendant No.2 is appointed as minor guardian of Defendant No.4

I.A.No.4 is filed by Prop.Defendants No.8 to 13 U/o.1 Rule 10(2) of CPC, seeking to implead themselves as Defendants No.8 to 13 in this suit.

The main ground urged by them is that, hitherto no partition took place between the sons and daughters of Karisiddappa by name Siddappa, Basappa, Kallappa, Rudrappa, Shivappa, Doddirappa, Sannirappa, Channabasavva and Eravva. All these persons are dead. Their was only family arrangement for cultivation of the lands by each branch. Plaintiffs misusing the entry of their names in revenue records have filed this suit in collusion with Defendants No.1 to 7. They are also proper and necessary parties, without whom suit cannot be adjudicated effectively.

This application is opposed by plaintiffs by filing objections interaria contending that partition was effected between father of the proposed

defendant by name Sannirappa and his brothers about 35 years back. Accordingly each branch is cultivating the properties from to their respective shares. Proposed defendants have effected partition among themselves about 12 years back. Now this application is filed with a malafide intention. No right is accrued to proposed defendants in land bearing R.S.No.163. No reasons are assigned by the proposed defendants for not entering their names in the revenue records within the period of limitation. Now this application is filed to grab the properties. On all these grounds, they sought for rejection of application.

Heard arguments of both counsels on I.A.No.4. scrutinized the records of the case.

Having heard arguments and on scrutiny of records of the case, following points arise for consideration:

1. Whether Prop.Defendants No.8 to 13 are proper and necessary parties to this suit, who are to be impleaded as parties to the suit?
2. What order?

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

REASONS

On Point No.1: The present suit is filed the plaintiffs claiming that they are the lineal defendants of Siddappa Karisiddappa Aralikatti. According to them the suit schedule properties are ancestral and joint family properties. As per proposed defendants, they represent the branch of Sannirappa who was the

brother of Siddappa and Son of Karisiddappa. According to them, hitherto no partition took place between sons and daughters of Karisiddappa. On the contrary, it is the core of contention of plaintiffs that about 35 years back partition took place between Siddappa and his brothers.

At this juncture, plaintiffs have produced certified copy of M.E.No.2299, which discloses that Siddappa Karisiddappa Aralikatti died on 12-03-1971 and names of Plaintiffs and Defendants came to be mutated in the revenue records pertaining to Suit Schedule Properties. This document does not spell out effecting of partition between Siddappa and his brothers. Another document produced by them is M.E.No.4549, which discloses that on 19-06-1981 Land bearing R.S.No.241/2 was purchased by Defendant No.1. Accordingly his name was mutated in the revenue records pertaining to the said property. Other documents are Record of Right-RTC in respect of suit schedule properties, which never indicate that partition was effected between Siddappa and his brothers.

It is also true that, at the time of deciding interlocutory application, findings on merits cannot be given. Whether partition was effected between Siddappa and his brothers is a matter of trial. To avoid multiplicity of proceedings, the prop.defendants No.8 to 13 are required to be impleaded as parties to this suit. Ultimately if court comes to conclusion that partition was effected between Siddappa and his brothers, claim of Proposed Defendants No.8 to 13 will be thrown at barrel. Therefore, looking from this angle, proposed defendants No.8 to 13 are

proper and necessary parties, without whom trial cannot be proceeded effectively. Hence considering all these aspects of the case and totality of the circumstances, I answer the Point No.1 in the affirmative.

Point No.2: For the foregoing reasons, I proceed to pass the following:

ORDER

I.A.No.4 filed by Proposed Defendants No.8 to 13 U/o.1 Rule 10(2) of CPC is hereby allowed.

Proposed Defendants No.8 to 13 are impleaded as parties to the suit.

Plaintiffs are directed to amend the cause title of the plaint and to furnish amended plaint.

Call on: 06-01-2021.

Addl.Senior Civil Judge & JMFC,
Haveri.