



**IN THE COURT OF THE CIVIL JUDGE AND JUDICIAL  
MAGISTRATE FIRST CLASS, SAVANUR.**

PRESENT : **Sri. SRINIVASA. S. N,**  
*B.A., LL.M.,*  
Civil Judge and JMFC.,  
Savanur.

**O.S.NO. 124 / 2014**

**Dated this 21<sup>st</sup> day of June, 2025**

**PLAINTIFF:** Sri Ramappa Hanmantappa Talawar

**Vs**

**DEFENDANTS:** Sri Shanmukhappa Bheemappa  
Talawar & Others

**IA No.XVI**

**Applicant:** Smt. Mallavva W/o Shivappa Huded and  
others

**Vs**

**Opponent:** Sri Shanmukhappa Bheemappa  
Talawar & Others

i	Provision under which the application is filed	U/O 1 Rule 10(2) R/W. Sec.151 of CPC
ii	Relief sought for	For Impleading Proposed Defendants
iii	The date on which the application is filed	01-02-2024
iv	The date on which the objection is filed by different opponents	23-02-2024
v	The date on which the order was passed on the said application	21-06-2025



**ORDER ON IA No.XVI**

The proposed defendants have filed this application I.A.No.XVI U/O 1 Rule 10(2) R/W. Sec.151 of CPC to implead them as defendant No.7 to 9 in the suit, in the interest of justice and equity.

**2.** The proposed defendant No.7 has sworn to in an affidavit accompanying with I.A.No.XVI, wherein she stated that she is swearing on behalf of other proposed defendant No.8 and 9 and she know the facts of the case. She contends that proposed defendants are the daughters of plaintiff and claim to have a share in the suit schedule properties. She has further stated that the plaintiff has excluded them while filing the suit. Hence they claim share in the suit properties and prayed to allow the application as they are the necessary parties to the suit. Hence, they prayed to implead them as defendant No.7 to 9 by allowing the present application.

**3.** Per contra, the plaintiff has filed objection to the said application and contended that when the father is alive, the proposed defendants are not necessary parties to the suit. The suit is of 2014 but they have filed this application in 2024. Hence the presence of the proposed defendants are neither necessary nor



proper for deciding the suit. Therefore they are not the necessary parties to the suit. Hence prayed to reject the application.

4. Heard the arguments of both the counsels and perused the materials available on record.

5. The following points have arose for my consideration;

#### P O I N T S

1. Whether the proposed defendants are necessary and proper parties to the suit ?
2. What order?

6. My answers to the above points are as under;

Point No.1: In the Affirmative

Point No.2: As per the final order for the following;

#### **REASONS**

7. **Point No.1:-** The plaintiff has field the present suit seeking for partition and separate possession in respect of the suit properties against the defendants.

8. Sri.I.R.C., Advocate appearing for the proposed defendant argued that the proposed defendants are the daughters of the plaintiff and are legal heirs entitled to a legitimate share in the suit schedule properties, which are stated to be ancestral properties. They contend that they are the necessary parties for the complete and effective adjudication of the matter. They assert



that unless they are added as parties, their interest in the suit properties will not be protected.

**9.** Sri.V.B.T., Advocate appearing for the plaintiff argued that the when the father i.e., plaintiff is alive, the proposed defendants are not necessary parties to the suit. Hence the presence of the proposed defendants are neither necessary nor proper for deciding the suit. Therefore they are not the necessary parties to the suit. Therefore he prayed to reject the application.

**10.** On careful observation of the pleadings, arguments and documents, the plaintiff has filed this suit seeking for the relief of partition and separate possession of suit schedule properties. The main question to be determined is whether the proposed parties are necessary or proper parties under Order 1 Rule 10(2) CPC in a suit for partition.

**11.** Order 1 Rule 10(2) CPC provides that the Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court to



effectually and completely adjudicate upon and settle all the questions involved in the suit, be added.

**12.** This provision is wide in scope and grants discretionary powers to the Court to implead any person whose presence is essential for the complete and effective adjudication of the matter. In the present case, it is not in dispute that the applicants are the daughters of the plaintiff. After the enactment of the Hindu Succession (Amendment) Act, 2005, the position of law is settled that daughters shall, by birth, become coparceners in their own right in the same manner as sons, having the same rights in the coparcenary property as if they had been a son. Therefore, the applicants/proposed defendants, being daughters of the plaintiff, acquire an equal share by birth in the ancestral properties. The mere fact that the father is alive does not extinguish their coparcenary rights.

**13.** In a suit for partition, all co-owners or co-sharers are necessary parties, and non-joinder of such parties may lead to an incomplete decree. Hence, the presence of all persons having an interest in the suit properties are necessary for passing a comprehensive and binding decree.



**14.** The plaintiff contended that the proposed defendants have filed this application after lapse of 10 years from the date of institution of the suit. The right of a coparcener does not get extinguished merely due to delay, especially when the suit is still pending and the trial is not yet concluded. Furthermore, allowing this application would avoid multiplicity of litigation and enable all disputes regarding the suit properties to be resolved in a single proceeding.

**15.** Under Order I Rule 10(2) of CPC, a person may be impleaded in a suit only if:

- a) They are a necessary party (i.e., the suit cannot be decided without their presence), or
- b) They are a proper party (i.e., their presence is necessary to enable the court to completely and effectively adjudicate the dispute).

**16.** Further, one of the daughter of the plaintiff filed I.A.No.15 to implead her as defendant No.6 and the plaintiff submitted to allow the said application. Thereafter this court has allowed the application and the plaintiff has carried out the amendment and filed amended plaint. Therefore when the other daughter was



already impleaded as defendant No.6 through a similar impleading application, the present application also deserves to be allowed. In light of the above observations, this Court is of the opinion that the applicants/proposed defendants are necessary and proper parties to the present suit and their presence is essential to for proper adjudication of the matter and to prevent any further litigation. For the above said reasons and observations, I answered the ***point No.1 in the Affirmative.***

**17. Point No.2:-** For the foregoing reasons, I proceed to pass the following;

**ORDER**

I.A.No.XVI U/O 1 Rule 10(2) R/W. Sec.151 of CPC, filed by the proposed defendants is hereby allowed.

Further, the proposed defendants are impleaded as defendant No.7 to 9 to proceed with the case.

Plaintiff is permitted to carry out the necessary amendment within stipulated time and file amended plaint.

*(Dictated to the Stenographer directly on computer, corrected and initialed by me and then pronounced in the open court on this day of 21<sup>st</sup> day of June 2025.)*

(SRINIVASA.S.N)  
Civil Judge & JMFC.,  
Savanur.