



IN THE COURT OF THE CIVIL JUDGE & J.M.F.C.,
SAVANUR

PRESENT: Sri. Janardhana. S.K. B.A.L.,LL.B.,
C/C Civil Judge & J.M.F.C.,
Savanur.

O.S.No.334 of 2012

DATED THIS 15th DAY OF FEBRUARY 2024

Plaintiffs : Basirahammad S/o Mahammadjafar
Annigeri and others.

(By Sri.P.R. Kalal, Advocate)

V/s

Defendants : Smt. Yallamma W/o Kedarappa Babani,
(Since dead by LRs)
1a. Raju S/o Kedarappa Babani and others.

(Def.No.1(a) and D-1(i) by Sri.N.S.Patil,
Advocate and Def.No.1(b) to (g) Ex-parte)

PARTIES TO I.A.No.XVII

Applicants/Proposed

Defendant No.1(i) : Kedarappa S/o Tanappa Babani,
Age : 60 years, Occ : Private Work,
R/o: Savanur, Tq : Savanur,
Dist : Haveri.



- V/s -

Opponents/

Plaintiffs : 1. Basirahammad S/o Mahammadjafar
Annigeri, Age : 60 years, Occ : Business,
R/o : Dandin Pete Street, Savanur,
Tq : Savanur, Dist : Haveri and others.

I	Provision under which the applications are filed	I.A.No.XVII U/o.1 Rule 10(2) R/W. Sec.151 of C.P.C.
II	Relief sought for	To implead proposed defendant No.1(i) as necessary party to the suit.
III	Date on which the applications are filed	I.A.No.XVII filed on 02-12-2023
IV	Number of applications	I.A.No.XVII
V	The date of which objections filed by the different opponent	The plaintiff No.1 has filed objection on 20-01-2024
VI	Date on which the order was passed on said applications	15-02-2024

(Sri. Janardhana. S.K.)
C/C Civil Judge & JMFC.,
Savanur.

ORDERS ON I.A.No.XVII

The applicant/proposed defendant No.1(i) has filed this application U/o. I Rule 10 R/W 151 of C.P.C., by seeking to implead himself as necessary party to the suit.



2. The application resisted by the counsel for the plaintiffs by filing objections inter alia among various grounds.

3. Heard the arguments of counsel for the plaintiffs and proposed defendant and perused the materials made available on record at this stage.

4. The points that would arise for the consideration of this court are as follows:-

POINTS

1. Whether the proposed defendant No.1(i) is necessary party to the suit for complete and proper adjudication of the suit?

2. What order?

5. The findings of this court on aforesaid points are as follows:-

Point No.1: In the Affirmative

Point No.2: As per final order for following:-

REASONS

6. **Point No.1:-** The applicant/proposed defendant No.1(i) in the affidavit annexed to the instant application has specifically deposed to facts to the effect that, his wife



Smt. Yallamma was died on 17-06-2021 by leaving behind himself and others as legal heirs and after reporting the death of sole defendant i.e., his wife, Smt. Yallamma the plaintiffs have brought on record other legal heirs of deceased defendant without including him in the suit. Himself being husband of the deceased sole defendant his presence in the suit for complete and proper adjudication of the same is very much necessary. It is further contended that, if application is rejected heavy loss and injury caused to him and if allowed no loss caused to the plaintiffs. On said grounds, it is prayed to allow the application.

7. Per contra, in the objections the counsel for the plaintiffs specifically contended that in response to interim application to bring LRs of defendant, they have appeared through their counsel and subsequently by giving opportunity to the legal heirs to file objections, same was allowed on merits and as such orders on application to bring the legal heirs of deceased defendant reached finality and as such the present application is not maintainable. The applicant has filed instant application to harass the plaintiffs and since suit is one for permanent injunction as well as mandatory injunction to demolish illegal construction put up in the suit schedule public way, the



proposed defendant is not a necessary party to the suit. Accordingly, it is prayed to dismiss the application.

8. In the context of relief sought for in the application and fact deposed in the accompanying affidavit and objections there to filed by the counsel for the plaintiffs, it well apparent that the plaintiff No.1 to 42 have filed this suit in representative capacity for the relief of mandatory injunction to demolish the illegal plinth put up in the alleged suit schedule public road and permanent injunction to restrain the defendant from encroach the property in VPC No.338 by way of permanent injunction. Admittedly, upon death of sole defendant Smt. Yallavva, her sons and daughters have already been brought on record as her legal heirs in the form of defendant No.1(a) to 1(h) as per orders passed on IA No.9 to 11. The proposed defendant claiming to be the husband of deceased sole defendant and which fact is not at all disputed by counsel for the plaintiffs in the objections. Such being the undisputed fact in respect to relationship of proposed defendant No.1(i) as husband of sole deceased defendant and as present suit has been filed alleging illegal construction by deceased sole defendant in the suit schedule public way, the proposed defendant has also got right and interest in the claim of the plaintiffs by stepping into the shoes of deceased defendant and right to



defend the same. Since, proposed defendant No.1(i) is undisputedly husband of deceased defendant, the plaintiffs ought to have impleaded proposed defendant No.1(i) as legal heir of deceased defendant while filing IA No.9 to 11. Mere allowing the aforesaid applications without bring the proposed defendant No.1(i) as legal heir of deceased sole defendant does not defeat the right of the proposed defendant to enter record. It is bounden duty of the plaintiffs to bring all the legal heirs of deceased defendant in the suit. Such being the facts all the objections of the counsel for the plaintiff is not tenable and proposed defendant No.1(i) admittedly husband of deceased sole defendant right to be sued survive to the proposed defendant No.1(i) sought to be included in the suit. Accordingly, **point No.1 answered in the affirmative.**

9. **Point No.2**:- In the light of said reasons and discussions, this court has proceed to pass following:-

ORDER

I.A.No.XVII filed by the proposed defendant No.1(i) U/o. I Rule 10(2) R/W.151 of C.P.C., is hereby allowed.

Consequently, proposed defendant No.1(i) is necessary party to the suit.



No order as to costs.

(Dictated to Stenographer, directly typed by her on computer, once corrected and later initialed by me and then pronounced by me in the open court on this the 15th day of February - 2024)

***(Sri. JANARDHANA S.K)
C/C Civil Judge and JMFC.,
Savanur.***



