

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

PRESENT: **SMT. MAMATHA D., B.Sc., LL.B.**
Civil Judge & JMFC, Shiggaon

DATED THIS THE 3rd DAY OF NOVEMBER, 2015

O.S. No. 54/2008

PLAINTIFFS : 1) Sri Chanaveeragouda S/o Karigouda Patil
Age: 46 years. Occ: Agriculture,
R/o Shingapur, Tq: Shiggaon Dist: Haveri.

2) Sri Shivanagouda S/o Karigouda Patil
Age: 38 years. Occ: Agriculture,
R/o Shingapur, Tq: Shiggaon Dist: Haveri.

3) Sri Fakkiragouda S/o Banappagouda Patil
Age: 48 years. Occ: Agriculture,
R/o Shingapur, Tq: Shiggaon Dist: Haveri.

4) Sri Tippanagouda S/o Chandragouda Patil
Age: 20 years. Occ: Agriculture,
R/o Shingapur, Tq: Shiggaon Dist: Haveri.

(Rep. by Sri. GSA, Adv.)

-- V/S --

DEFENDANTS : 1) Sri Chanabasanagouda A/F Fakkiragouda Patil
Age: 45 Years, Occ: Agriculture,
R/o Shingapur, Tq: Shiggaon, Dist: Haveri.

2) Sri Yallanagouda S/o Sankanagouda Patil
Age: 40 Years, Occ: Agriculture,
R/o Shingapur, Tq: Shiggaon, Dist: Haveri.

3) Sri Bhojanagouda S/o Kotragouda Patil
Age: 45 Years, Occ: Agriculture,
R/o Kadarmandalagi,

Now at Bankapur (Vernekar Chal)
Near Bus Stand, Tq: Shiggaon, Dist: Haveri.

- 4) Sri Naganagouda S/o Fakkiragouda Patil
Age: 52 Years, Occ: Agriculture,
R/o Shingapur, Tq: Shiggaon, Dist: Haveri.
- 5) Sri Somanagouda S/o Fakkiragouda Patil
Age: 50 Years, Occ: Agriculture,
R/o Shingapur, Tq: Shiggaon, Dist: Haveri.
- 6) Sri Subhas S/o Tirakappa Mugadur
Age: 55 Years, Occ: Agriculture,
R/o Shingapur, Tq: Shiggaon, Dist: Haveri.

(Rep.D-1,2,4,5 by Sri STP, Adv.)
(D-3 by Sri MGH, Adv.)
(D-6 by Sri RMH, Adv.)

ORDER ON I.A.NO. 7

This is an application filed by the proposed defendant No.7 to 10 on I.A.No.7 under order 1 rule 10(2) r/w section 151 of CPC seeking to implead the applicants as defendant No.7 to 10 in this case.

2. The brief contents of the application is as follows:

The applicants are the joint owners and holders of 11 acres 14 guntas land in survey No.71 and 72 of Shingapur village, Shiggaon Taluka, along with the present plaintiffs and defendants. The plaintiffs are not the absolute owners of the suit property. The defendant No.1 to 6 are no way concerned with their share in survey No.71 and 72. Hence, the plaintiffs are not entitled for the relief

claimed in the said suit property. The defendants have no right, title or interest in the land which is held by us as joint owners comprised in survey No.71 and 72 to the extent of 11 acres. After the death of Basanagouda Dyamanagouda Patil the present defendant No.6 and one Fakkiragouda Patil and Sankanagouda Ninganagouda patil got their names entered as LR's of the said Basanagouda Dyamanagouda Patil in the revenue records pertaining to survey No.71 and 72. Though they are no way related or concerned to the family of the deceased Basanagouda Dyamanagouda Patil. The said persons are claiming to be the owners of entire survey No.71 and 72 which is illegal and contrary to the facts and not supported by any iota of evidence. Therefore, their presence in this suit is very much relevant, necessary and required for proper and effectual adjudication of the lis involved in this case. Hence, prays to allow the application.

3. The plaintiffs have filed objections to the application stating that the proposed defendants are nowhere related to the plaintiffs and defendants and for the suit property. Except plaintiffs they are not having any right over the suit property. The proposed defendants have not furnished any documents to show that they are related to the suit property. Hence, prays to dismiss the application.

4. The defendant No.1, 2, 4 and 5 also filed objection to the application stating that the proposed defendant No.7 to 10 are total strangers to the family of these contesting defendant No.1 to 5 and

to the suit properties. The defendant No.2 being an absolute owner had sold the western side 5 acres 31 guntas of family land to one Bhojanagouda Kotragouda Patil for a valuable sale consideration of Rs.1,62,000/- and registered sale deed dated 11-4-2007. If they had any right over the suit properties they ought to have challenged the sale deed within 3 years from the date of said sale deed i.e. on or before 11-4-2010. The application filed by the applicants is barred by provisions of limitation act. The proposed defendants are total strangers to the family of defendant No.1 to 5 and to the suit properties. They are either necessary parties nor the proper parties not entitled to come on record in the instant suit. If the application is allowed it will cause further delay to proceed with the matter. Hence, prays to allow the application.

5. Heard the arguments. Perused the records.

6. The following points arisen for my consideration are as follows:

1) Whether the proposed defendant No.7 to 10 have made out sufficient ground to allow the application on I.A.No.7?

2) What order?

7. My answers to the above points are as under:

Point No.1	: -	In the Affirmative.
Point No.2	: -	As per final order, for the following:

REASONS

8. Point No.1: - This is a suit filed by the plaintiffs seeking for the relief of declaration and consequential relief of permanent injunction against the defendant No.1 to 6. The plaintiffs are claiming their title over the suit property for land bearing survey No.71 measuring 11 acres 22 guntas situated at Shingapur village, Shiggaon taluka, Haveri District. The plaintiffs after the death of their ancestors inherited said property and thereby, they are the absolute owners and in peaceful and enjoyment of the suit properties without anybodies interference. On the other hand, the defendant No.2, 4 and 5 in their written statement stated that after the death of propositus Dyamanagouda Basanagouda Patil, the father of defendant No.1 and 2 they are Fakkiragouda, Sankanagouda inherited the suit properties as per mutation bearing No.487. There is no joint possession over the suit properties by the plaintiffs as on the date of the suit. After the appearance of the parties issues was framed and plaintiffs side already examined as PW-1 and case is posted for cross of PW-1. The proposed defendants have filed the above application to implead them in this suit. The proposed defendants in their application contended that the defendant No.6 and one Fakkiragouda adopted father Fakkiragouda Patil and Sankanagouda Patil i.e. father of defendant No.1 and 2 got their names entered as a LRs of Basanagouda Dyamanagouda Patil in the revenue records related to the concerned family of deceased Basanagouda Patil. On this point, the proposed defendant also

furnished number of documents to show that the mutation entries regarding entry of the names of defendant No.6, father of defendant NO.1 and 2 as per M.E.No.487. The proposed defendants also furnished mutation bearing M.E.No.389 to show that deceased Basanagouda Murigeppagouda Patil died on 16-3-1969 leaving behind Murigeppagouda, Ramanagouda, Shekharagouda as a sons, Fakkiravva, Yallavva, Shamabavva as a daughters leaving behind land bearing survey No.71, 72, out of 89/1, 63/1, 89/2, 32/2, 33/1, 49/1, 50/2, 82/1, 50/3 and 30/4. Thereby, the names of sons of the deceased is entered for the said properties. The said Ramangouda Shekharagouda are the applicants No.1 and 2 and two sons of Murigeppagouda are the applicants No.3 and 4 in the I.A.No.7. The proposed defendants also furnished M.E.No.518 to show that Murigeppagouda died leaving behind 3 sons they are the applicant No.3 and 4 herein and another Chandragouda leaving behind his 1/3 share in survey No.33/1 out of survey No.71 and 72, 89/1, 89/2, 63/1, 32/2, 50/2 out of 49/1, 89/1, out of 50/3 and 30/4. The proposed defendants also furnished RTC for survey No.71 which is standing in the name of Patil Basanagouda Dyamanagouda. The proposed defendants also furnished Genealogy to show that they are the legal heirs of Basappa Murigeppagouda. Though the plaintiffs have specifically denied their objection that proposed defendants no way related to the plaintiffs and defendants and suit properties. But, at this stage, the relationship of the parties can not be determined, it

requires trial. On the other hand, the defendant No.1, 2, 4 and 5 specifically denied the relationship of the proposed defendants. The present defendants stated that the application is barred by limitation.

The application filed by the proposed defendant is seeking to implead them as a defendant No.7 to 10 in this case. The proposed applicants have not challenged regarding sale deed executed by the defendant NO.2 in favour of one Bhojanagouda Kotragouda Patil and it is barred by limitation is to be looked during the trial when the rights of the parties is concerned. Therefore, at this stage if, the present application is not allowed the proposed defendants will be put to hardship and lead to multiplicity of the proceedings. As per the mutation entries discloses that they are the LRs of Basanagouda Murigeppagouda Patil and the deceased Basanagouda was in the possession of survey No.71 and 72 at Singapur village.

9. On this point, the proposed defendants have relied upon the following citations:

AIR 2005 GUJARAT 80 – Jeram Kanji Prajapati vs. State of Gujarat and others

O.1, R.10-Impleadment of party-Suit for recovery of societies dues-property of deceased president of society sought to be sold for recovery of societies dues-Petitioner was directly affected by outcome of appeal-Held entitled to be impleaded as party to the proceedings of appeal.

2014 (1) KCCR SN 42 – N.Krishnamurthy vs. enkataramaiah and others

O.1, R.10-Impleading –Petitioner/Applicant made an application for impleading claiming himself as the Inamdar-Plea that he is a proper and necessary party to suit.

AIR 2005 NOC 298 (DELHI)- Jheel Kurenja Milk Producers'Co-op.Society Ltd. and another vs. DDA and others

O.1, R.10-Impleadment of party-Suit for eviction from plot filed against member of society-Society was granted lease which was not extended after expiry-Eviction pertained to part of land leased to society-Noticee who was member of society claimed possession under society-Society would be obviously affected by orders passed in proceedings-Order declining prayer of society to be impleaded as party.

2008(3)KAR L.J.55- Uppar Eranna vs. The deputy commissioner Bellary District, Bellary and others

Section 129-Registration of mutations-Petitioner purchaser of revenue land in 1985, his name appears in relevant revenue records.

AIR 2005 SC 2209- Amit Kumar Shaw and another vs. Farida Khatoon and another

O.1, R.10-O.22, R-10-Addition of party-Transferee pendente lite can be added as a proper party if his interest in the subject matter of suit is substantial and not just peripheral.

AIR 2010 SC 2617- The District Collector, Srikakulam and ors. Vs. Bagathi Krishna Rao and Ors.

Necessary party-Appeal against decree passed in suit for declaration of title and permanent injunction-Appellants officers of State Govt. claiming that suit land vest in State. Appeal filed without impleading state not maintainable.

10. Perused the above citations furnished by the proposed defendants. They have made that they are the legal heirs of deceased Basanagouda Patil therefore, to know the relationship between the plaintiffs, defendants and proposed defendants it

requires trial. The principle laid down in the citations furnished by the proposed defendants is applicable to this case. Therefore, at this stage, the rights of the parties can not be decided as they are having absolute right or not and it requires full fledged trial. The delay caused in filing the said application can be compensated by imposing proper cost. In order to avoid multiplicity of the proceedings and in the interest of justice it is just and necessary to allow the application. Hence, I answer above point in the Affirmative.

11. **Point No.2** :- For the reasons stated above, I proceed to pass the following;

ORDER

The application filed by the proposed defendant No.7 to 10 on I.A.No.7 under order 1 Rule 10(2) r/w section 151 of CPC is allowed on cost of Rs. 300/-.

(Dictated to Steno, transcribed and typed by her, then corrected, signed and pronounced by me in the open Court on 3rd day of November-2015).

**(MAMATHA D.)
Civil Judge & JMFC,
Shiggaon.**

glm*