

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC
AT JEWARGI

PRESENT: Sri. Sandeep A. Naik B.A., LL.B.,(Spl.)
Senior Civil Judge & J.M.F.C.,
Jewargi.

Dated This the 15th Day of March-2024

ORIGINAL SUIT NO.46/2017

PLAINTIFF : Smt. Dundamma W/o Ravi Teli,
Age: 30 years, Occ: Private work,
R/o Aheri, Tq: & Dist: Vijayapur.

.....(By. Sri.B.B., Advocate)

V/s.

DEFENDANTS:

1. Appasaheb @ Appasahebgouda
S/o Rudragouda Biradar,
Age: 55 years, Occ: Business,
R/o Maganageri, Tq: Jewargi,
Dist: Kalaburagi.
2. Smt. Laxmibai W/o Appasaheb
@ Appasahebgouda Biradar,
Age: 50 years, Occ: Household,
R/o Bagalur, Tq: Sindagi, Dist: Viyapur.
3. Gollalappagouda S/o Rudragouda
Biradar,
Age: 58 years, Occ: Business,
R/o Maganageri, Tq: Jewargi,
Dist: Kalaburagi.
4. Smt. Siddamma D/o Gollalappagouda
Biradar,
Age: 32 years, Occ: Household,

R/o C/o Dharmaraj, PWD Quarters,
Shahapur-585223, Dist: Yadgiri.

.....(D1 & D2 By. Sri.S.P., Advocate)
.....(D3 & D4 By. Sri.J.V.H., Advocate)

PARTIES TO I.A. NO.14

APPLICANT/ : Dundamma
PLAINTIFF

V/S
OPPONENT/ : Appasaheb @ Appasahebgouda and
DEFENDANTS Others

i.	Provision under which the application is filed	U/o 1 rule 10 of CPC
ii.	Relief sought for	Permission to implead parties
iii.	The date on which the application is filed	22-01-2022
iv.	Number of the application	IA No.14
v.	The date of which the objections are filed by different opponents	Nil
vi.	The date on which the orders were passed on the said application	15-03-2024

ORDER ON IA No.14 FILED BY THE PLAINTIFF U/o 1 Rule 10 of C.P.C.

The plaintiff has filed this application to implead proposed defendant No.5 to 8 as additional defendants in the present suit since they are proper and necessary parties to the present suit.

2. The plaintiff sworn to the affidavit stating that the proposed defendant No.5 is mother of defendant No.1 and her grandmother and proposed defendant No.6 is brother of defendant No.1. The proposed defendant No.7 and 8 are the wives of defendant No.1. She born within the first wedlock of defendant No.1 with Lakshmibai @ Shankremma. The suit and non suit properties are joint and ancestral properties of Hindu Undivided Family. The proposed defendants are also members of the Hindu Undivided Family and are necessary and proper party to the suit and in their absence effective decree cannot be passed. Therefore she prayed to allow the application.

3. After filing of the application notice of application was issued to the proposed defendant No.5 to 8 but they remained absent.

4. On considering the IA and IA affidavits, points that would arise for my consideration are as under.

1. Whether the Interim application filed by the plaintiff Under Order 1 rule 10 of C.P.C. is deserves to be allowed and whether the proposed defendants are necessary and proper parties to the present suit?

2. What Orders?

5. The plaintiff counsel argued that the proposed defendants are also members of the Hindu Undivided Family. They are necessary and proper parties to the present suit and in their absence effective decree cannot be passed. Therefore he prayed to allow the application.

6. My answer to the above points are as under:

Point No.1 : In the Affirmative.

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

REASONS

7. **Point No.1:-** Admittedly, the plaintiff has filed this suit for partition and separate possession and material available on record it reveals that the present suit was dismissed as per judgment and decree dated 25-04-2019. Aggrieved by the said judgment and decree the plaintiff has preferred RFA No.200174/2019 and the Hon'ble High Court of Karnataka pleased to remitt back the matter and permitted to plaintiff implead all the other family members in the suit and also to move necessary amendment application to bring all the joint family properties in a common hotchpot.

8. At this stage it is useful refer a decision reported in ***(1995)3SCC147 in between Anilkumar Singh /vs/ Shivanath Mishra wherein the Hon'ble Supreme Court pleased to held that " the object of the rule is to bring on record all the persons who are parties to the dispute relating to the subject matter so that the dispute may be determined in their present at the same time without any protraction, inconvenience and avoid multiplicity of proceedings. A person may be added as a party - defendant to the suit though no relief may be claim against him provided his presence and necessary for complete and final decision on***

the question involved in the suit. Such a person is a only proper party as distinguish from necessary party.

9. Further the Hon'ble Hon'ble High Court of Karnataka in AIR 1992 Karnataka 380 in between Abdul Jaleel /vs/ Aishabi while dealing with order 1 Rule 10(2) of C.P.C. pleased to held that " the expression to settled all question involved used in Order 1 Rule 10(2) of C.P.C. is susceptible of liberal and wide interruption so as to adjudicate all the questions pertaining to the subject matter thereof. The parliament in its wisdom while framing this rule must have thought that all the material questions common to the party to the suit and to the third parties should be tried once for all and court is clothed with the power to secure the aforesaid result with judicial discretion to add parties, including third parties".

10. At this stage it is useful to refer a decision reported in ***ILR 2016 KAR 2979 in between Sri.M.Narayana & Another /vs/ Smt. Ramakka & Others***, wherein it was held that court has discretion to add such parties who are necessary and proper party to the suit in order to adjudicate the real controversy in between the parties. Therefore in the absence of the proposed defendants present matter is adjudicated it would to multiplicity to proceedings and lead to future complications.

11. In the present case the proposed defendants are stated to be the members of Hindu Undivided Family. If the proposed

defendant No.5 to 8 are not brought on record and this court proceeds with the case and adjudicate the matter in their absence then the rights of proposed defendants then it will once again lead to multiplicity of proceedings and even it will amounts to violation of the order passed by the Hon'ble High Court of Karnataka in RFA No.200174/2019. Therefore in order to adjudicate the matter effectively and conclusively it is necessary to allow the application since the proposed defendants are not only proper parties but also essential and necessary parties to the present suit and in their absence suit cannot be adjudicated effectively and completely. Therefore, I am of the view that the application filed by the plaintiff is deserves to be allowed. Hence I answer Point No.1 in the Affirmative.

12. **Point No. 2:** For the foregoing reasons assigned in point No. 1, I proceed to pass the following

:: ORDER ::

The IA No.14 filed by the plaintiff U/O 1 Rule 10 of C.P.C. is hereby allowed.

The plaintiff is permitted to bring proposed defendants as defendant No.5 to 8 in the present suit.

The plaintiff is hereby directed to amend plaint and to furnish amended plaint copy.

No order as to costs.

(Dictated to the Stenographer directly on computer, typed by him, corrected and then pronounced by me in the Open Court on this 15th Day of March-2024).

(Sandeep. A. Naik)
Senior Civil Judge,
Jewargi.