

KAKB620022582021



**IN THE COURT OF CIVIL JUDGE AND J.M.F.C., AT:
JEWARGI**

Present:

SRI. KASHINATH UPPAR,
B.Sc, LLB
Civil Judge & JMFC, Jewargi.

O.S. No. 135/2021.

Dated this the 20th day of July-2024.

Plaintiffs: 1. Malkawwa W/o Basappa @ Basvaraj & another
(By Sri. G.V.Hatti., Advocate)

//VERSUS//

Defendants: 1. Shivagangamma @ Shivalingamma W/o Saibanna
and others.
(By Sri. B.B. Advocate)

PARTIES TO I.A.No.II

Applicant/
Original
Plaintiffs: 1. Malkawwa W/o Basappa @ Basvaraj & another

//Vs//

Opponent/
Original
Defendants: 1. Shivagangamma @ Shivalingamma W/o Saibanna
and others.

**ORDER ON I.A. No.2 FILED
U/O. 1 Rule 10 (2) R/W sec. 151 of C.P.C.**

The proposed defendant No.4 to 8 have filed this this application to implead them as proposed defendant No.4 to 8 in the

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present case as they are the proper and necessary party the present suit.

2. The plaintiff filed objection to IA No.2 and contended that the proposed defendant No.4 to 8 have not stated their relationship with the plaintiff, without giving relationship proposed defendant No.4 to 8 with parties to the suit, the petition is not maintainable. Therefore the proposed defendant No.4 to 8 are not proper and necessary parties to the suit and there are no documents to prove that they are necessary parties to the suit. Hence, prayed to reject IA No.3.

3. The proposed defendant No.4 to 8 sworn to the affidavit stating that they are the LRs of deceased Basappa @ Basavaraj. But, the plaintiff filed suit against her parental granted mother Shivalingamma. The deceased Basappa @ Basavaraj is the son of deceased Saibanna and defendant No.1. The plaintiff No.1 is the wife of deceased Basappa and plaintiff No.2 is the daughter of deceased Basappa. On perusal of the documents produced by the proposed defendant No.4 to 8 their Adard cards and school records, the the name of deceased Basappa is reflecting, but in their affidavit they have not shown relationship with deceased Basappa. On perusal of Adharcards it reveals that, deceased is Basappa is the father proposed defendant No.4 to 8. The presence of proposed defendant No.4 to 8 are the necessary parties in order to adjudicate all the questions and controversies involved in the present suit. The present suit trial is yet to commence. Therefore, the proposed defendant No.4 to 8 prayed to allow the application.

4. On considering the I.A. affidavit and argument of both sides. The points that would arise for my consideration is as under:

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1. Whether the proposed defendant No.4 to 8 are the proper and necessary party to the present suit and whether the application filed by the proposed defendant No.4 to 8 is deserves to be allowed?
 2. What order?
5. 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

6. **Point No.1:-** I have perused the documents available on record. This is a suit for partition and separate possession and the plaintiffs have sought share in the suit schedule properties. The proposed defendant NO.4 to 8 are the LRs of deceased Basappa @ Basavaraj. But, the plaintiff filed suit against her parental granted mother Shivalingamma. The deceased Basappa @ Basavaraj is the son of deceased Saibanna and defendant No.1. The plaintiff No.1 is the wife of deceased Basappa and plaintiff No.2 is the daughter of deceased Basappa. On perusal of the documents produced by the proposed defendant No.4 to 8 their Adard cards and school records, the name of deceased Basappa is reflecting, but in their affidavit they have not shown relationship with deceased Basappa. On perusal of Adharcard, it reveals that, deceased is Basappa is the father proposed defendant No.4 to 8. The presence of proposed defendant No.4 to 8 are the necessary parties in order to adjudicate all the questions and controversies involved in the present suit. The presence of proposed defendant No.4 to 8 are the necessary parties in order to adjudicate all the questions and controversies involved in the present suit. Therefore, the impleading proposed defendant No.4 to 8 are the necessary party to the present suit. In the absence of proposed

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defendant No.4 to 8, the matter cannot be adjudicated finally and effectively. When such being the case, I found no fault to implead the proposed defendants as defendant no.4 to 8 in the present suit. Further if the application is not allowed it will lead to multiplicity of proceedings and in order to avoid multiplicity of proceedings it is necessary to allow the present application.

7. 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 leads to multiplicity of proceedings and lead to future complications.

8. Moreover, to determine the share and right over the suit property it can be opined that proposed proposed defendant No.4 to 8 is necessary and proper party to the present suit. Therefore, proposed defendant No.4 to 8 are essential, proper and necessary parties to the present suit. Therefore, the application filed by the proposed defendant No.4 to 8 is deserves to be allowed. Hence, **I answer point No. 1 in the Affirmative.**

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

: ORDER :

I.A. No.2 filed by the proposed defendant No.4 to 8 U/o.1 Rule 10(2) R/w sec. 151 of CPC is hereby allowed.

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The proposed defendant No.4 to 8 is hereby permitted to implead as proposed defendant No.4 to 8 in the present suit.

Plaintiff is directed to carry out necessary amendment to the plaint.

For amendment and amended copy of plaint by 12-08-2024.

(Dictated to the stenographer directly on computer and then corrected by me and thereafter pronounced in the open court on this the 20th day of July-2024).

(KASHINATH UPPAR).
CIVIL JUDGE, JEWARGI.

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