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**IN THE COURT OF THE I ADDL., CIVIL JUDGE AND JMFC
AT BANGARPET**

:PRESENT:

SMT. SUKEETA S. HADLI,

B.B.A.,LL.B.,(Hons)

I ADDL., CIVIL JUDGE & JMFC., BANGARPET.

O.S. NO.110/2022

DATED THIS 5th DAY OF FEBRUARY 2025

PLAINTIFFS: **Shoundhala & others.,**

(Rep. by Sri.**K.M.V.**, Advocate)

-V/S-

DEFENDANTS: **Rathnamma & others.,**

(D1 placed as **Ex-parte**,
D2, 3 Rep. by Sri.**M.P.R.**,
D4 Rep. By Sri.**L.N.R.**, Advocate)

PARTIES TO I.A. NO.III

Applicant: K.Perumal.,

-V/S-

Opponent: Shoundhala.,

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ORDER

The proposed defendant No.4 has filed an application seeking an order of this Court to implead himself as defendant No.4 in the case in hand, in the interest of justice and equity.

PROPOSED DEFENDANT NO.4:-

Sri.K.Perumal.,
S/o late Munishami,
Aged about 78 years,
R/o Karahalli Village,
Kasaba Hobli,
Bangarpet Taluk,
Kolar District.

2. In the affidavit accompanying the application it is stated that the proposed defendant, plaintiff, defendants and others are all the members of Hindu joint family possessing and enjoying the properties including the suit schedule properties situated at Karahalli Village of Bangarpet Taluk. It is stated that the plaintiffs and defendant No.1 to 3 have filed the above suit on the basis of alleged created and fabricated documents in order to affect the rights and interest of the proposed defendant with respect to the suit schedule properties. The plaintiff and the defendants are not having inclusive rights of ownership over the suit property bearing

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Sy.No.182/1 and other properties, which belong to all the members of the joint family including the proposed defendant. It is also stated that there is no partition in the family as such the suit schedule properties along with other properties still continue in jointness. Any relief that may be granted to the parties in the suit will have an effect on the legal right of the proposed defendant. It is further stated that the plaintiffs and defendant No.1 to 3 by suppressing the fact of existence of other family members have instituted the collusive suit with an intention to have unlawful gain. Hence, he prays to allow the application.

3. The plaintiffs have filed their objections to the application in hand. In the objection it is stated that the application is neither maintainable in law nor on facts. It is stated that the contents of the affidavit are all false. In addition to it, it is contended that the proposed defendant has nothing to do with the suit as the plaintiffs are very much aware about the legal aspect as and who are the author of the suit. The relief is required only against the present

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defendants and the proposed defendant is not at all required for adjudicating the suit. The proposed defendant has not placed any valuable legal valid document in order to make out the grounds to consider his application. It is further contended that if at all the proposed defendant intends to adjudicate and establish his right he can freely file a independent comprehensive suit and implead on record all the family members and the properties belonging to the said family. All these grounds the plaintiffs have prayed to reject the application.

4. I have heard the counsel for proposed defendant No.4 and plaintiff on I.A.III and perused the records.

5. The following points arise for determination:-

1. Whether the presence of the proposed defendant No.4 before the Court is necessary in order to enable the Court to adjudicate the matter effectually and completely ?
2. What order?

6. After hearing the arguments and on considering the relevant materials on record, my findings on the above points

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are hereunder:-

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

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

REASONS

8. **Point No.1:-** The present suit has been filed by the plaintiffs seeking the relief of partition and separate possession against the defendants with respect to the suit schedule properties. The present application came to be filed when the case was posted for plaintiff evidence.

9. In the case in hand the proposed defendant has filed an application to implead himself as defendant No.4. The proposed defendant asserts that plaintiffs along with defendant No.1 to 3 have filed collusive suit, concerning suit schedule properties that are jointly owned and possessed by the entire family. He contends that the plaintiffs and defendants have deliberately suppressed the fact of joint family ownership and have filed the suit, despite their being

no prior contention in the joint family property. The proposed defendant primary plea is that suit, as it currently stands, does not accurately reflect the true nature of ownership and possession of the suit schedule properties. Therefore his rights should be adjudicated along with the parties already on record. Hence, the instant application.

10. On the other hand, the plaintiff opposes the present application contending that the proposed defendant is not a necessary or a proper party to the suit. The plaintiffs further contended that they are fully aware of legal rights pertaining to the suit properties and the question of proposed defendant right if any can be dealt through separate suit. According to the plaintiffs, the inclusion of proposed defendant would not serve any useful purpose in the partition suit, as the issues of the instant suit are distinct and unrelated to the proposed defendants claim.

11. The issues here involve determining whether the proposed defendant should be allowed to join the suit as the necessary party. The proposed defendant claims a right over

the suit schedule properties, asserting that it is a part of the joint family property and no partition has taken place given the nature of the claim but proposed defendant seeks to establish his right over the suit properties, which directly impacts on the outcome of the partition suit. The crux of the proposed defendant's arguments is that, in order to effectively adjudicate the matter on partition and separate possession all those with a legitimate claim to the property must be included in the proceedings. It is also settled in jurisprudence that in a suit for partition all persons who are all interested in the partition and have legal claim must be made as a parties to the suit. In this case the application to implead the proposed defendant must be examined in the light of the aforesaid principle. The proposed defendant asserts that he has legitimate claim over the suit schedule property and he contends that the properties in question are not partitioned amongst the family members. Thus, proposed defendant's interest is directly relevant to partition and separate possession issues at hand. His exclusion from the suit could result in an incomplete or in unjust adjudicate of family

rights in the suit schedule properties.

12. At this stage, the Court is not required to conduct a mini trial or make a definitive finding on the rights of the proposed defendant. As such the contention of the defendants that the proposed defendant has not furnished any legal document to substantiate his claim does not hold any water. The primary objective at this stage is to neither ascertain the nature of the properties nor question and determine the extent of share in family's properties. By allowing the proposed defendant to implead himself as a party to the suit, the Court can ensure that all the parties with a potential claim to the suit schedule properties are given an opportunity to present their claims. This would enable to the Court to adjudicate the lis in comprehensive manner, addressing all the issues at variance between the parties and thereby avoiding any piecemeal litigation in the near future. It is evident that the proposed defendant cannot be left unheard especially when he claims the right over the suit schedule properties. Therefore in the light of discussion made herein above it appears that the presence of proposed

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defendant is just and necessary for adjudication of the dispute between the parties to the suit. Therefore the proposed defendant is permitted to come on record as defendant No.4 and put forth his claim. ***Hence, I answer Point No.1 in the Affirmative.***

13. POINT NO.2:- In the light of the above discussion, I pass the following:-

O R D E R

I.A.No.III filed by the proposed defendant No.4 Under Order 1 Rule 10 R/W Section 151 of CPC is hereby allowed.

The proposed defendant No.4 is permitted to come on record as defendant No.4.

For carrying out amendment and furnish amended plaint.

No order as to costs.

*(Dictated to the **Stenographer**, typed by her on computer and corrected by me, then pronounced in the open Court on this day **5th February 2025.**)*

Sd/-
I Addl., Civil Judge and J.M.F.C.,
Bangarpet.