

KAKL510002532024



IN THE COURT OF I ADDL. CIVIL JUDGE AND J.M.F.C.,
AT : K.G.F

Present:

Smt. Shemida.K, B.A.(Law), LL.B.,
1st Addl. Civil Judge and J.M.F.C,
KGF

Original Suit No.50/2024

Dated this the 10th day of July, 2025

Plaintiff : Smt.Anusuyamma,
W/o Late Srinivas,
Aged about 61 years,
R/at Peddapalli Village & Post,
KGF Taluk.

(Rep., By Sri.K.M., Advocate)

V/s

Defendants : 1. Smt.Sunitha,
W/o Late Venugopal,
Aged about 51 years.

2. Sri.Sunil,
S/o Late Venugopal,
Aged about 29 years.

3. Smt.Bindu,
D/o Late Venugopal,
Aged about 29 years.

The defendant No.1 to 3 are
R/at Peddapalli Village & Post,
KGF Taluk.

4. Smt.Susheelamma,
W/o B.Venkatappa,
Aged about 61 years,
R/at Peddapalli Village & Post,
KGF Taluk.

(Rep., By Smt.K.P., Advocate)

IA No.III

APPLICANTS : Smt.Narayanamma and others

(Proposed Defendant No.5 to 11)

V/s

OPPONENT : Smt.Anusuyamma.

(Plaintiff)

i. Provision under which the application is filed	Under Order 1 Rule 10 r/w Sec.151 of CPC filed by the proposed defendant No.5 to 11
ii. Relief sought for	To implead them as defendant No.5 to 11
iii. The date on which the application is filed	23.06.2025
iv. Number of the application	IA.No.III
v. The date on which the objections are filed by different opponent/s	28.06.2025
vi. The date on which the orders were passed on the said application	10.07.2025

ORDERS ON I.A.No.III

The counsel for applicants have filed an application under Order 1 Rule 10 r/w Section 151 of CPC as IA No.III seeking permission to implead them as defendant No.5 to 11

as they are necessary parties, in the interest of justice and equity.

2. The application is supported with the affidavit of proposed defendant No.10, wherein he has stated that the plaintiff has filed the present suit against the defendants for the relief of Partition and separate possession with respect of suit-schedule properties. Further stated that one Sri.Bychappa during his lifetime has married to one Smt.Ramakka, out of their wed-lock four children were born by name Smt.Narayanamma, Smt.Venkatamma, Sri.Venkatappa and Sri.Gangappa. Further the said Smt.Narayanamma was married to one Subbarayappa and out of their wed-lock Sri.Venkataramappa, Sri.Ramesh, Smt.Shusheela and Smt.Sunitha were born. In that Sri.Venkataramappa and Smt.Shusheela were demised. Further the daughter of Bychappa i.e., Smt.Venkatamma was married to one Sri.Munivenkatappa and out of their wed-lock Sri.Srinivas was born. Further Sri.Venkatappa is the 3rd child of Bychappa who has married to one Smt.Venkatalakshamma as first wife and out of their wed-lock, they had two children by name Smt.Anusuyamma and Sri.Venugopal, in that Sri.Venugopal has demised. Further the said Sri.Venugopal has married to one Smt.Sunitha, they got Sri.Sunil and Smt.Bindhu as children in their wed-lock.

2(a). Further stated that the said Sri.Venkatappa had married to one Smt.Shushelamma as second wife and in that Smt.Nagarathna, Smt.Aruna and Sri.Anand were born.

Further the 4th child of Bychappa i.e., Sri.Gangappa was married to one Smt.Lakshamma and in that wed-lock, the proposed defendants No.5 to 9 and 11 and the applicant were born and the suit schedule properties are their joint family properties of them. Further stated that there was no Partition in the properties of Sri.Bychappa and now the applicants who are the legal heirs of Sri.Gangappa are entitled for their respective share in the suit-schedule properties. Further stated that the plaintiff without impleading them as necessary parties has filed this false suit to deprive their rights, hence they are necessary parties to the present suit. Further stated that recently they have come to know about the pending of present case and they intend to contest the matter as they also have share in the suit-schedule properties. Hence prays to allow the application.

3. On the other hand the learned counsel for plaintiff has filed detailed objection wherein it is contended that the proposed applicants were filed this false application and it is not maintainable in the eye of law. Further contended that the plaintiffs and defendants are only the legal heirs to Sri.Venkatappa to whom the suit-schedule properties are belongs. Further contended that the present applicants have filed a suit in OS.No.36/2015 before the Hon'ble Senior Civil Judge for the relief of Partition and in the said proceedings it was held that Sri.Gangappa was not the son of Sri.Bychappa and the said suit was dismissed on 25.01.2018. Further contended that in this regard till date the applicants have not

preferred any appeal and when the Court already opined that the proposed defendants father is not the son of Sri.Bychappa, then impleading them as necessary parties in the present suit does not arise. Further contended that the present application is filed only to drag on proceedings and it has to be dismissed with heavy costs.

4. I have heard the arguments from both the sides. Perused the documents on record. During the time of argument the counsel for plaintiff has filed the copy of judgment passed in OS.36/2015 dated 25.10.2018.

5. Having heard and on perusal of materials on record, the following point that would arise for my consideration;

1) Whether the applicants have made out valid grounds to implead the proposed defendant No.5 to 11 as defendants as per IA.III at this stage as prayed for?

2) What order?

6. My finding on the above points are as follows;

Point No.1 : In the Negative,

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

:- R E A S O N S :-

7. **Point No.1:** On perusal of the materials on record it reveals that, the plaintiff has filed the present suit against the defendants for the relief of Partition and Separate Possession. When the matter was stood for further chief of PW1, the

present application was filed by the applicants and opposed by the plaintiff.

8. It is to be noted that the applicants has filed the present application under **Order 1 rule 10 of CPC** which deals about suit in name of wrong plaintiff. Further the said provision reads as follows:

(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted thought a bonafide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) Court may strike out or add parties - The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name, of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where defendant added, plaint to be amended - Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

(5) Subject to the provisions of the Indian Limitation Act, 1877 (15 of 1877), section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.

9. It is pertinent to note that, as per **Order 1 Rule 10 of CPC**, Court may at any stage of proceeding permit the parties to add or strike out the parties for the determination of the real matter in dispute. Further the plaintiff can't be compelled to fight against a person whom he does not wish to fight and against whom he does not claim any relief. The above said provision is very wide and the powers of the Court are equally extensive. Further the object is to bring before the Court all persons at the same time with respect of suit-schedule property to avoid multiplicity of proceedings.

10. Further the applicant also filed the said application under Sec.151 of CPC which deals about saving of inherent powers of the Court which reads as follows: *“Nothing in this*

Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the Court". The above said section clearly shows the discretionary power of the Court to pass appropriate order in the interest of justice if there is no provision in the CPC.

11. In the application the applicant stated that they are the legal-heirs of Sri.Gangappa who is the son of Sri.Bychappa and they having legitimate share over the suit-schedule properties. Per contra the contention of the plaintiff that in OS.36/2015 it is already held that Sri.Gangappa is not the son of Sri.Bychappa, hence the applicants are not the necessary parties. On this background I have perused the record wherein the plaintiff clearly stated that their propositior name is Sri.B.Venkatappa who is the third child of Sri.Bychappa and the plaintiff who is the daughter of said Sri.Venkatappa has filed the case against the defendants with respect of her share in item No.1 to 8 suit-schedule properties.

12. It is to be noted that the counsel for plaintiff has filed the copy of judgment in OS.36/2015 filed by the proposed applicants which was dismissed on 25.10.2018 by Hon'ble Addl Sr. CJ, KGF. In the said decision the Hon'ble Court has opined that the plaintiffs who are the applicants in the present suit were filed to establish that their father by name Sri.Gangappa is the son of late Sri.Bychappa and discussed about the genealogical tree produced by them and dismissed the suit. The main contention of the plaintiff is that

applicants not preferred any appeal with respect of judgment and decree passed in OS.36/2015. It is pertinent to note that in the application the applicants not stated about anything regarding OS.36/2015 and their contention is that Sri.Gangappa was one of the child of Sri.Bychappa and they are entitled for share in the suit-schedule properties. The said decision passed in OS.36/2015 is still in force and it was not set-aside by any competent Court. Since there is specific observation that the applicants father Sri.Gangappa is not the son of Sri.Bychappa then how the present applicants are becoming necessary parties or proper parties to the present suit. In this regard the counsel for applicant not submitted any reply for the same.

13. It is really strange that till date the applicants not preferred any appeal with respect of OS.36/2015. Further the present case was with respect of shares of one of the child of Sri.B.Venkatappa who is the son of Sri.Bychappa, hence the applicants not considered as necessary parties nor proper parties. Further the applicants fail to made out prima-facie ground to consider their application. If the applicants really having grievance then they should preferred an appeal against OS.36/2015 dated 25.10.2018 and not filing present nature of application. Hence the present application is devoid of merits. There is no ground made out to consider the request of the applicant. Hence I answer **Point No.1 in the Negative.**

14. Point No.2 :- With these observations, I proceed to pass the following;

-:: O R D E R ::-

***The I.A.No.III filed by the applicants
under Order 1 Rule 10 r/w Sec.151 of CPC is
hereby rejected with a cost of Rs.500/-.***

*(Dictated to the Stenographer directly on computer and revised and corrected by
me then pronounced in the open court, this the 10th day of July, 2025)*

Sd/-

(SHEMIDA.K)

**I Addl. Civil Judge & JMFC
KGF**