

KAKL600000162022



**IN THE COURT OF THE PRL. CIVIL JUDGE AND JMFC, AT
SRINIVASPURA.**

:PRESENT:

**SRI. MANU B.K., *B.A.L., LL.M.*,
Prl. Civil Judge & JMFC, Srinivaspura**

Dated, this the 18th day of December 2023

O.S.No: 3/2022

PLAINTIFF/S: Narayanaswamy

(By Sri. N.S.G., Adv.,)

-V/s-

DEFENDANT/S: Konappa & another

(D1 By Sri N.V.J Adv & D2 by M.H., Adv.,)

PARTIES TO I.A.No.7

Applicant/Defendant : Srinatha H.N

-V/S-

Opponent/Plaintiff : Narayanaswamy

ORDERS ON IA No.7

The proposed defendant has filed this application seeking to implead him as a defendant No.3 in this case.

2. In the affidavit annexed to the application, the proposed defendant has stated that the defendant No.1 is his grand father, defendant No.2 is his uncle. The defendant No.1 has executed the gift deed in favour of the proposed defendant with respect to item No.2 of the suit schedule property and katha also changed accordingly. Hence, his presence is essential to resolve the real question in contravercy between the parties. Therefore, the proposed defendant prays to allow the application.

3. As against the application filed by the proposed defendant, the plaintiff has filed objection by contending that the application is not maintainable and the proposed defendant is not a necessary party to the suit. If the proposed defendant

has any right, he has to claim independently. Hence, the plaintiff prays to reject the application.

4. Heard the learned counsel for the plaintiff and proposed defendant.

5. The points would arise for my consideration are;

**1. Whether the proposed defendant
is a necessary party to a suit ?**

**2. Whether the proposed defendant has made out
grounds to implead him in the suit ?**

3. What Order?

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

Point No.1 : In the **AFFIRMATIVE**

Point No.2 : In the **AFFIRMATIVE**

Point No.3 : **As per final order,**

for the following;

REASONS

7. **Point No.1 and 2:** Since this points are interconnected, those points are taken up together for common discussion and in order to avoid repetition of facts.

8. In order to grant the relief sought by the proposed defendant, he must establish that he is a necessary party to the suit. As per the contention of the proposed defendant the defendant No.1 has executed a giftdeed in his favour with respect to item No.1 of the suit schedule property. To prove the aforesaid contention, he has produced a copy of giftdeed and RTC Extract. The said documents and contention of the proposed defendant would depicts that the item No.1 of the suit schedule property is standing in the name of the proposed defendant. Hence, it seems that he is a necessary party to the suit. In the arguments the learned counsel for the plaintiff has contended that the representative of proposed defendant is already on record, hence he is not a necessary party. However,

the material discloses that the item No.1 of the suit schedule property is standing in the name of proposed defendant. This is the suit for partition. Hence, if the suit is decreed, then the father of the proposed defendant will get right of partition. But, if the application is not allowed, then the validity of giftdeed alleged to be executed by defendant No.1 will be remained unchallenged. On the otherhand if the application is allowed and if the proposed defendant is brought on record, then the validity of giftdeed also can be ascertained in this case and same may avoid multiplicity of proceedings. Hence, it seems that the proposed defendant is a necessary party to the suit and he has produced documents to show that he is entitled to implead as a party to the suit. As such I am answering point No.1 and 2 in the **AFFIRMATIVE**.

9. **POINT NO.3:** On the basis of discussion made on point No.1 and 2, I proceed to pass the following;

ORDER

I.A.No.7 filed by the proposed defendant under Order 1 Rule 10(2) R/w Sec.151 of CPC is hereby allowed with cost of Rs.500/-.

The proposed defendant by name Srinath is permitted to implead as defendant No.3 in this case.

The learned counsel for the plaintiff is directed to amend the plaint and also directed to file amended plaint by 16.01.2024.

(Dictated to the Typist directly on computer then corrected by me and pronounced in the open court on this the 18th day of December 2023)

Sd/-

(MANU .B.K.)

Prl. Civil Judge and JMFC.,
Srinivaspura.