

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

Dated this 5th day of **January 2021**

Present : H.R. Devaraju, B.A.LL.B.,
Prl.Civil Judge and J.M.F.C.,
Srinivaspura.

O.S.No.197/2015

PLAINTIFF/S:

- 1. Sri. Manoj Kumar S/o Narayanaswamy,**
Aged about 13 years, minor,
- 2. Kum. Ruchitha D/o Narayanaswamy,**
Aged about 10 years, minor,

Both are minors appear through
their own mother as natural guardian
by name Smt. Manjula W/o Narayanaswamy.

R/o Chinnapura Village,
Kondenahalli Post, Kolar Taluk.

(By Sri. K.S.P., Advocate)

-V/s-

DEFENDANT/S:

- 1. Sri. Venkataramappa S/o Late Muniramappa,**
Aged about 85 years,
- 2. Sri. Narayanaswamy S/o Anjappa,**
Aged about 36 years,
- 3. Smt. Hanumakka D/o Venkataramappa,**
Aged about 50 years,
All are R/o Kolathuru Village,
Yelduru Hobli,
Srinivaspura Taluk.

**(Defendant No.1 and 2 – Exparte,
Defendant No.3 by Sri. B.V.S., Advocate)**

I.A.NO.6**Applicant:**

Sri. N. Narayanaswamy S/o Late Narayanappa,
Aged about 55 years,

R/o Kolathuru Village,
Yelduru Hobli, Srinivaspura Taluk.

-V/s-

Opponents/ Plaintiff :

Sri. Manoj Kumar S/o Narayanaswamy and another.

ORDERS ON I.A.NO.6

This is an application filed by the applicant namely Sri. N. Narayanaswamy S/o Late Narayanappa under Order 1 Rule 10(2) of C.P.C., for seeking permission to implead himself as defendant No.4 into the present suit.

2. The applicant in his affidavit accompanying to this I.A has stated that the 1st defendant namely Sri. Venkataramappa was executed a registered Will in favour of him, said Will written on 17.10.2013, registered on 19.10.2013. The deceased 1st defendant Sri. Venkataramappa bequeathed the property bearing Sy.No.95 measuring 22 guntas situated at Kolathuru

Village, Yelduru Hobli, Srinivaspura Taluk in favour of him. After the demise of Sri. Venkataramappa he has acquired the right over the said property by way of registered Will. He is in possession of the said property and said property included by the plaintiff into the present suit as item No.4 of the suit schedule properties. Hence, he is necessary party to the suit. Further he submits that if this application is not allowed much hardship would causes to him. Hence, prays for allow the application.

3. Per contra the plaintiffs have filed detailed objection to the present application and contended that application filed by the applicant is not maintainable either in law or facts. Further they contended that the applicant has concocted the Will dated 19.10.2013. Further they contended that testator namely Sri. Venkataramappa had no intention to bequeath the property in favour of applicant, earlier to Will, father of the plaintiff was in respondent in C.Mis.No.37/2012 and maintenance was ordered against him earlier to alleged Will. The deceased 1st defendant had no sound mental health to execute the Will.

Hence, the applicant has created the Will. Hence, prays for dismiss the application filed by the applicant herein.

4. Heard arguments on I.A.No.6 and perused the documents placed on record.

5. The following points arise for the consideration of this Court;

1. Whether the applicant shows that his presence before this court is necessary in order to enable the court effectually and completely to adjudicate upon and settled all the questions involved in the present suit?

2. What Order?

6. My findings on the above points are as follows:

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

Point No.2 : **As per the final order**

for the following;

REASONS

7. **Point No.1:-** The plaintiff has filed present suit for partition and separate possession in the suit schedule properties against the defendants. It is the case of the plaintiffs that they are the children of 2nd defendant. The suit schedule properties are the ancestral and joint family

properties of the deceased 1st defendant. The suit schedule properties were re-granted to the 1st defendant during year 1976. The plaintiffs and defendants are in joint possession of the suit schedule properties. Hence, they are filed present suit for partition and separate possession.

8. It is the contention of the applicant that deceased 1st defendant had been executed a Will on 17.10.2013 and registered on 19.10.2013 in his favour with respect to item No.4 of the suit schedule properties. On the other hand the plaintiffs have contended the applicant has created and concocted the Will in his favour as executed by the deceased 1st defendant. The 1st defendant had no intention to bequeath the item No.4 of the suit schedule properties in favour of applicant herein.

9. On perusal of the plaint, the plaintiff has included the property bearing Sy.No.95 situated at Kolathuru Village, Yelduru Hobli, Srinivaspura Taluk as item No.4.

10. It is well settled that a person may be added as a party whether as plaintiff or as defendant when his presence is necessary in order to dispose the suit

effectively. It is the contention of the applicant that deceased 1st defendant had executed the Will in favour of him. The contention taken by the plaintiffs is subject matter of trial, because, on *prima-facie* basis court is unable to come to conclusion that the applicant has created the Will, it needs enquiry. Further item No.4 of the suit schedule properties is subject matter of Will. Hence, presence of the applicant is necessary to ensure that all matters in dispute are effectively or completely determined. In the absence of applicant court is unable to pass a decree effectively. Hence, court of the opinion that presence of applicant is very much necessary in order to enable the court effectually and completely to adjudicate upon and settled all the questions involved in the suit. Accordingly, I answer point No. 1 in the **Affirmative**.

11. Point No.2: In view of my above discussions, I proceed to pass the following;

ORDER

I.A. No.6 filed by the applicant under

Order 1 Rule 10(2) of C.P.C is hereby allowed.

The applicant is hereby permitted to come on record and proceed with the suit as defendant No.4.

The plaintiff is hereby directed to amend the plaint by impleading the applicant as defendant No.4. from the 14 days of this order.

(Dictated to the Stenographer directly on the computer, typed by him, corrected and then pronounced by me in open court, this the 5th day of **January 2021**)

(H.R. Devaraju)
Prl.Civil Judge and J.M.F.C.,
Srinivaspura