

ORDERS ON IA NO.9

This application is filed by the applicant under order 1 Rule 10 (2) R/W/S 151 of CPC to implead him as defendant No.2 in the case.

2. In the affidavit filed to the application it is stated that the applicant is uncle of the defendant No.1 (a) to (d). The suit schedule property is originally belonged to his grand-father. It is given to the share of the father of the applicant at an oral partition took place in the year 1984. The said partition is reduced into writing on 04.12.2000. The father of the applicant was in possession and enjoyment of the suit schedule item No.1 property during his lifetime. After his death, his children including the applicant divided their family properties in which the suit schedule item No.1 property is fallen to the share of the applicant. He is in possession and enjoyment of the same. The said property is standing in the name of father of B. Boregowda. Therefore, he has filed the present application to implead him as defendant No.2.

3. The plaintiff has filed objection to the present application and contended that the entire averments made in the affidavit filed to the application are false except the relationship of the applicant with the present defendants. It is contended that suit schedule item No.1 property along with other properties was fallen to the share of the father of

the plaintiff at partition effected through partition deed dated 29.07.1945. He was in possession and enjoyment of the same during his lifetime. After his death, the plaintiff is in possession and enjoyment of the same as its absolute owner. Therefore, it is prayed to dismiss the present application.

4. Heard and perused.

5. The point that arises for my consideration is as follows ;

Whether the applicant is a necessary party to the suit?

6. My answer to the above point is in the **Negative** for the following ;

REASONS

7. The present suit is filed for declaration and permanent injunction. The plaintiff has claimed that his father was the absolute owner in possession of the suit schedule item No.1 property as per partition deed dated 29.07.1945. The defendants have made rival claim over the suit schedule item No.1 property by contending that it was purchased by their ancestor Boraiah @ Boregowda through registered sale deed 03.10.1952. The applicant claims to be son of a brother of father of the defendant No.1 (b) to (d). He claims that the suit schedule item No.1 property was fallen to the share of his father at partition took place between his father and his brothers. But the present defendants in their written

statement have not stated anything about the same. They claimed that suit schedule item No.1 property is their absolute property and they derived title by inheritance. The applicant has produced copy of partition deed dated 04.12.2000. But it is an unregistered partition and therefore it cannot be relied upon. He has produced RTC and mutation registered extracts. They are not pertaining to suit schedule item No.1 property. The applicant has not produced the documents to show that the suit schedule item No.1 property was standing in the name of his father. He has not produced revenue records standing in his name. He has not produced revenue records standing in the name of his ancestor to show that, at the time of partition alleged by him, it was standing in the name of his ancestor. In the absence of the above said documents, it cannot be said that *prima facie* the applicant has right over the suit schedule item No.1 property. Therefore, the applicant cannot be considered as either necessary or proper party in this suit. Hence, this court is of the considered view that the applicant is neither necessary nor proper party. Accordingly, the above point is answered in the **“Negative”**. Hence, this court proceeds to pass the following:

ORDER

IA No.14 is filed Under order
1 Rule 10 (2) R/W/S 151 of
CPC is hereby rejected.

For cross of PW2 and PW3.
Call on 09.04.2026

**Addl. Senior Civil Judge & JMFC.,
Maddur.**