

ORDERS ON IA NO. XXVII

IA No. XXVII is filed by the plaintiff under Order 22 Rule 10 of CPC to permit him to continue the suit as legal representative of the defendant No.1 on the basis of Will executed in his favour by the defendant No.1 dated 24.07.2015.

2. In the affidavit filed to the application it is stated that, the present case is filed for partition and separate possession. The defendant No.1, 2 and 4 filed the written statement and admitted the case of the plaintiff. They have also sought for partition of their share in the suit schedule properties. The defendant No.1 is the mother of the plaintiff. She bequeathed her share in the suit schedule property in favour of plaintiff through Will dated 24.07.2015. She died on 29.06.2019. Therefore the plaintiff is the legal representative of the defendant No.1. Hence, the present application is filed to permit him to continue the suit as legal heir of defendant No.1.

3. The defendant No.5 and 6 have objected the present application by filing statement of objections and contended that, the entire averments made in the affidavit filed to the present application are false. The plaintiff has not amended the plaint disclosing the existence of alleged Will dated 24.07.2015. The alleged Will is concocted and created by the plaintiff. There is no provision under law to permit the plaintiff to continue the suit as legal heir of defendant. He can lead evidence to prove the alleged Will. If he succeeds in proving it, the share of defendant No.1 will devolve upon him. The defendant No.1 died leaving behind her children including the defendant No.5 and 6. Therefore it is prayed to reject the application.

4. Heard and perused.

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

1. Whether the plaintiff has made out sufficient grounds to permit him to continue the suit as legal representative of defendant no.1?

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

REASONS

7. The present suit is filed in the year 2012 for the relief of partition and separate possession along with other reliefs. There was stay by the Hon'ble High Court of Karnataka in W.P. No.55849-55850/2018 which is disposed off recently. The defendant No.1 is the mother of the plaintiff and defendant No.2 to 5. Through the present application the plaintiff has sought for permission of the court to continue the suit as legal heir of defendant No.1 on the basis of Will dated 24.07.2015 allegedly executed by the defendant No.1. In the present case, it has to be adjudicated that whether the defendant No.1 has got share in the suit schedule properties. If she is entitled to share in the suit schedule property, then only the plaintiff can claim that the share of defendant No.1 is bequeathed in his favour. The entitlement of the defendant No.1 will be decided in the final decision of the case. Therefore at this stage the plaintiff cannot be permitted continue the suit as legal representative of the defendant No.1. The plaintiff in order to claim that he is legal representative of defendant No.1 has to plead necessary averments in his plaint about the same. But such pleadings are not there in the plaint. Therefore this Court is of the considered view that, the

present application is liable to be rejected. Accordingly, the above point is answered in the “**Negative**”. Hence, this court proceeds to pass the following:

ORDER

IA No. XXVII filed under Order 22 Rule 10 of CPC is hereby rejected.

For cross of PW1.

Call on 19.01.2026

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