

ORDERS ON I.A.NO.6

This is an application filed by the proposed defendant No.18 seeking an order of her impleadment as the defendant No.18 in the present suit.

2. The application is supported with the affidavit of the third party applicant. In her affidavit, she has stated that the present suit has been filed by the plaintiff against the defendants in respect of the suit schedule property. She is said to be the daughter of Late. Ningamma and grand daughter of Late. Dodda Nanjunda and Mariyakka. But, the plaintiff has not arrayed this third party applicant as a party in the present case intentionally and for wrongful gain and very recently, this applicant came to know the fact of filing the suit from the defendants. By filing the suit on the basis of the false genealogical tree without including this applicant as the family member of the plaintiff and the defendants, the plaintiff intends to gain wrongful gain. It is further stated that one Piddegowda was the propositous of the family and out of the wedlock with Ningamma, they got two sons by name Dodda Nanjunda and Chikka Nanjunda. The said Dodda Nanjunda had a wife by name Mariyakka and out of their wedlock they got three daughters by name Smt. Nanjamma, who is the mother of the plaintiff, Smt. Ningamma who is the mother of this applicant and Smt. Sannamma, who is the grand mother of the defendants No.11 to 16 herein. In view of this, this applicant is a necessary party in the present case and she is also one of the family member of the plaintiff and the defendants. It is submitted that she has got personal interest over the suit schedule property. Hence, her

impleadment is very much necessary. It is alleged that the plaintiff has fraudulently filed the present suit against the defendants in collusion with some enimical persons in order to obtain a judgment and decree behind back of this applicant without arraying her as a party in the present suit. By stating these grounds, it is urged to allow the application.

3. After filing this application, this Court has called for the objections from the plaintiff's side. The plaintiff has submitted his no objections in respect of this I.A. None of the defendants have filed their statement of objections in respect of this I.A. Moreover, none of the parties have addressed their arguments in respect of this I.A.

4. I have gone through the entire contents of the application filed by the third party applicant. In this regard, it is very much necessary to consider the provision U/o.1 Rule 10(2) which reads as follows:-

10. *"Suit in name of wrong plaintiff. -*

(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.....”

5. As per the said provision of law, a necessary party is one, whose presence is absolutely necessary and without whose presence the issue cannot be effectually and completely adjudicated upon and decided between the parties. A proper party is one whose presence would be necessary, to effectually and completely adjudicate upon the disputes.

6. It is to be noted that in the present suit, the plaintiff has shown the name of the propositus as Piddegowda and his wife Ningamma, who had got two sons by name Dodda Nanjunda and Chikka Nanjunda. It is to be noted that the said Dodda Nanjunda had got a wife by name Mariyakka and both of them have got three children by name Nanjamma, Ningamma and Sannamma. This applicant is said to be the daughter of one Ningamma, the second daughter of Dodda Nanjunda and Mariyakka. But, in the case on hand, the plaintiff has not added this applicant as a proper or necessary party. Now, when the case is posted for evidence on plaintiff's side, the present application came to be filed. It is to be noted that whatever the claim made by this third party applicant is not disputed by the plaintiff. Moreover, the plaintiff has submitted his no objections to add the present applicant as the defendant. None of the defendants have challenged the version of the third party applicant. Under these circumstances, I am of the opinion that this third party applicant has made out grounds to believe her relationship with the plaintiff and the defendants. When such

being the case, it is just and necessary to adjudicate the rights of the third party applicant and as such, it is just and necessary to add her as a proper and necessary party in the present suit. Hence, the application filed by the third party applicant deserves to be allowed. Accordingly, I proceed to pass the following:-

ORDER

The application U/o.1 Rule 10(2) r/w Sec.151 of CPC filed by the third party applicant is hereby allowed.

No order as to costs.

The third party applicant is hereby added as the defendant No.18 in the present suit.

Call on for amendment of the plaint and to submit the amended plaint by:-

15.02.2018.

Senior Civil Judge,
Maddur.