

Orders on IA – XII

The Plaintiff has filed IA-XII u/o I Rule 10(2) CPC seeking for impleading 16 persons as proposed defendants on the ground that they are necessary parties to the suit, which is filed by him for partition and separate possession.

2. The proposed defendants have been served with the notice and only the proposed defendants at Sl. No.4 to 16 have appeared through Sri BAG advocate and have filed objections opposing the IA on the ground that it is not maintainable and they are not necessary parties as transfer or alienation in respect of suit property had taken place in 1965-66.

3. Heard the learned counsel Sri MNR for the plaintiff and Ms.SN advocate for Sri BAG advocate, for the proposed defendants, who have filed objections as stated above.

4. The only point that arises for consideration is that 'whether the presence of the proposed defendants is necessary in this case in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in this case?'

5. Having considered the IA, objections, pleadings and material on record, the aforementioned point is answered in the affirmative, for the following;

Reasons

6. This is a suit for partition and separate possession of the suit properties. The learned counsel for plaintiff has argued in reference to exhibit P2 and has stated that the proposed defendant at Sl. No.1 is the wife of Late Dodda Biligowda S/o

Thammegowda S/o Nanjamma D/o Dodda Nanjunda, who was the son of the propositus. She is also the mother of defendants No.7 and 8. The proposed defendant at Sl. No.2 is the daughter of said Dodda Biligowda and sister of defendants No.7 and 8. The proposed defendant at Sl. No.3 is the wife of deceased defendant No.5 and mother of defendants No.9 and 10. Further the learned counsel for plaintiff has pointed out with reference to Ex. P10(RTC) in respect of the suit Sy. No.7/1 that the said property to an extent of 2.20 acre and 2.07 acre stands respectively in the name of Kempegowda S/o Ankegowda and Nanjappa S/o Late Anka alias Chikkonu. It is stated that the proposed defendants at Sl. No.4 to 7 are the LRs of said Nanjappa S/o Late Anka alias Chikkonu and the proposed defendants are the LRs of Kempegowda S/o Ankegowda i.e. the persons named in Ex. P10(RTC). Such being the case, I am of the considered opinion that the proposed defendants are proper and necessary parties in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in this case.

7. Ms. SN advocate for Sri BAG advocate for the contesting opponents has vehemently argued that an alienation was made in the year 1965-66 in favour of said Nanjappa and Kempegowda and the sale deed has not been challenged within the period of limitation. In so far as the contention of the contesting opponents to this IA that the alienation was made in the year 1965-66, the learned counsel for the plaintiff has argued that the suit has been filed in respect of the share of Nanjamma D/o Dodda Nanjunda and that the said Dodda

Nanjunda did not have any sons but only three daughters and therefore the proviso under Sec.6 of Hindu Succession Act does not apply. At this stage, no document has been placed on record regarding any alienation as contended by the contesting opponents. Moreover, the effect of any alienation and consequential transfer of possession, if any, would be subject matter of trial and adjudication. Such being the case, also for the adjudication of said question raised by the contesting opponents, I am of the considered opinion that they are the necessary parties to this suit.

8. Hence, considering the reasons stated by the plaintiff, it appears that the presence of the proposed defendants is necessary in this case in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in this case. Accordingly, the aforementioned point is answered in the affirmative and hence, the following;

ORDER

IA-XII u/o I Rule 10(2) CPC is hereby allowed.

The plaintiff is permitted to implead the proposed defendants as defendants No.20 to 35 in this suit.

Considering the age of the case, the parties are directed to co operate in the expeditious disposal of this case without seeking unnecessary adjournments.

For amendment of /amended plaint, call on 09/11/2021.

(Dictated to the typist in the open Court, transcribed by her directly on the Computer, transcript corrected by me and then pronounced in the open Court on this the 02nd day of November, 2021).

Addl. Senior Civil Judge & JMFC,
Maddur.