

KAMD300005482016



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE
AND MACT, MADDUR**

PRESENT : SRI M.C. NANJE GOWDA, B.A.L., LL.M.,

ADDITIONAL SENIOR CIVIL JUDGE AND JMFC,
MADDUR, MANDYA DISTRICT

DATED: THE 07TH DAY OF JULY, 2023

OS. NO.62 OF 2016

Plaintiff: Sri. Chikka Marigowda

V/s

**Defendants: Smt. Chikkathayama
and others**

ORDER ON IA-XV

The Applicant by name Shankaralingaiah has filed an application u/o 22 rule 10 r/w 151 of CPC to implead him as defendant No.1(a) in the suit.

2. The defendant No.17 has filed objections.
3. Heard both side.
4. Having heard both sides and perusal of necessary materials on record, this court answers the above points are:

1. Whether the applicant has made out grounds to implead himself as defendant No.1(a) in the present suit?

2. What order ?

5. Now, the findings of this Court to the above points are as under :-

Point No.1 : In the Affirmative

Point No.2 : As per final order for the following:

REASONS

6. POINT No.1 :- It is the say of the applicant that his father has filed this suit for partition and separate possession of his share. The defendant No.1 is his aunt i.e., his father's sister. She expired on 13/7/22. His aunt did not have any children. During her life time, she was living with him and he was looking

after her. Therefore, she has executed a will dated 7/3/22 in his favour. Therefore, by virtue of the said will he has become the owner of her share. Hence, he is a necessary party and he has to be impleaded as a party.

7. The first objection of the defendant No.17 is that without probate certificate, the applicant cannot come as party to the suit. But this contention is not fully acceptable. Because to claim right before the civil court based on a will, probate is not necessary. Because, the civil court has got powers to decide the questions with regard to the will also. Generally probate is required when administrator is appointed. In the present case there is no administrator appointed. Therefore, this objection of the defendant No.17 the probate is required to come as party is not acceptable. The defendant No.17 also has contended that the applicant has not taken care of deceased and applicant has falsely stated so in the affidavit. But this allegation including the other allegations with regard to the execution of the will and capacity to execute the will have to be ascertained from the trial. At this stage, it is not possible to give any findings on these

aspects. Therefore, the defendant no.17 can raise this contention during the trial. Even the other contentions that there is collusion between him and his father and documents have been created by them for the purpose of case and that the executant of the will did not have any independent right and otherwise she would contested the suit seriously are also the matters of trial. At this stage, they are not the matters to be considered.

8. What is required to be considered at this stage is in what capacity now he wants to be added as party. According to him defendant No.1-Chikkathayamma has executed a will in his favour. Now admittedly defendant No.1 is expired. Now he wants to come on record as party by virtue of the will alleged to have executed by his aunt. The applicant apart from proving the execution of the will, all that executant had to prove if she was alive, shall be proved by the applicant. But to prove the same, he must become a party. If he has not become the party he cannot prove the same. Hence, he is a necessary party to the suit to that extent. **However, the applicant will have to convince the court how he can act as GPA holder of his father who is**

the plaintiff and at the same time claim the property as legal representative of deceased defendant No.1 who stands in the opposite footing during the trial. Therefore, keeping open all the contentions to be raised by both the parties during the trial, the application has to be allowed. **Accordingly, point No.1 is answered in the affirmative.**

9. **POINT No.2** :- For the reasons stated and findings given on Points, this court proceed to pass the following :

ORDER

IA No.XV filed by applicant by name Shivalingaiah under order 22 rule 10 r/w 151 of CPC is hereby allowed. The plaintiff to carry out amendment and furnish the amended plaint.

Arguments on merits by 15/7/2023

**(M.C. NANJE GOWDA)
ADDITIONAL SENIOR CIVIL JUDGE AND
JMFC., MADDUR,**