

IN THE COURT OF THE II ADDL. CIVIL JUDGE & JMFC
AT MADDUR

Dated this the 18th day of March 2023

:: PRESENT::

**KIRAN S.P., B.B.M., LL.B.,
II Addl. Civil Judge, Maddur**

OS No. 408/2017

Plaintiff : - Smt, Sukanya and another

V/s.

Defendants :- Smt Gowramma and others

Cause Title On IA NO.X

Applicant: - Smt, Sukanya and another

(By Sri.K.M.S., Advocate)

**Respondents: D.2(a) Smt Lakshamma,
W/o Late H.M.Lingarajamurthy,
Aged about 45 years,**

**D.2(b) Smt. H.L.Chaitra,
D/o Late H.M.Lingarajamurthy,
Aged about 26 years,
R/o of Loksara Village,
Kothathi Hobli, Mandya Taluk.**

**D.2(c) Sri. H.L.Sagar,
S/o Late H.M.Lingarajamurthy,
Aged about 24 years,**

**D.2(d) Sri.H.L.Kishor
S/o Late H.M.Lingarajamurthy,
Aged about 22 years,**

**D.2 (a), (c) and (d) are all R/o
Huligerepura Village,
Kasaba Hobli, Maddur Taluk.**

: ORDER ON I.A. No. X :

The applicant has filed IA No. 10 U/O 22 rule 3 and 4 R/W sec 151 of CPC, praying for permit them to implead legal representative of defendant No.2 as defendant No. 2 (a) to 2(d).

2. The said application is accompanied with an affidavit of plaintiff No.1 and stating that the plaintiffs have filed this suit against the defendants for the relief of partition and separate possession. In the meanwhile defendant No.2 by name H.M.Lingarajamurthy, expired on 26/10/2022 leaving behind his wife and children as class-I legal heirs. By virtue of the death of defendant No.2, his legal heirs have succeeded to the estate and right to sue survives against the legal heirs of deceased defendant No.2 and they are just and necessary parties to the case. If the legal heirs are allowed to be brought on record, no prejudice or nothing will be caused to the other side. On the other hand, if the legal heirs of defendant No.2 are not allowed to come on record, the plaintiffs will be put to irreparable loss and injury resulting great injustice, which cannot be compensated in terms of money and they will be driven to unnecessary multiplicity of proceedings. Therefore they have prayed to allow the application.

3. In spite of issuance of notice on IA No. 10 to the legal representatives of defendant No.2, they have not appeared before the court.

4. Heard Arguments, perused materials placed on record.

5. The point arises for the determination of this court as under.

Point No.1: Whether the plaintiffs have made out sufficient grounds to allow IA no 10?

Point No.2: What order?

6. My findings on the above points are as follows:-

Point No. 1 : In the Affirmative

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

REASONS

7. POINT NO.1: I have gone through the plaint averments, the plaintiffs have filed this suit against the defendants for seeking the relief of partition and separate possession. On perusal of the affidavit averments, it reveals that defendant No. 2 died on 26.10.2022, the right to sue is survive on the Lrs of the deceased in present suit. The present application is filed

in time, hence it is just and necessary to give opportunity to plaintiffs to bring the Lrs of defendant No. 2 on record as defendant No 2 (a) to 2(d), If the application is allowed, no hardship or injury would be caused to the other side, per-contra if application is not allowed the plaintiffs will be deprived an opportunity to get the case adjudicated on merits. Hence I am of the opinion that the plaintiffs have made out sufficient grounds to allow the application. Accordingly, I answer Point no 1 in the Affirmative.

8.POINT NO. 2: For the foregoing reasons, I proceed to pass the following;

:ORDER:

IA No 10 filed by the plaintiffs U/O 22 Rule 3 and 4 R/w Sec. 151 of CPC is allowed

It is directed to plaintiffs to bring the legal representatives of defendant No. 2 on record as defendant No. 2(a) to 2(d) in this suit by carry out necessary amendment to the plaint.

For amendment carry out by

(Dictated to the stenographer, transcribed by him, corrected and then pronounced in the open Court on this the **18th day of March 2023**)

(KIRAN S.P)

II Addl. Civil Judge & JMFC: Maddur.