

KAMD410007742016



**IN THE COURT OF I ADDITIONAL CIVIL JUDGE AND  
JMFC, MALAVALLI**

Present

***Sri. Sachinkumar Shivapuji. BA,L LLB.,***  
*I Addl.Civil Judge and JMFC.,*  
Malavalli

Dated this the 26<sup>th</sup> day of September, 2022

**Original Suit No.130/2016**

**Plaintiff:** Sri. Abhishek and another

**(By Sri.MNR., Advocate.)**  
**V/s**

**Defendants:** Sri. Channashetty and others

**(D1,2,4 to 8 By Sri.CV., Advocate.**  
**D3 By Sri. MMR., Advocate.,**  
**D9 By Sri. HPR., Advocate.,**  
**D10 By Sri. SHN., Advocate.)**

**I.A. No.XV**

Applicant/plaintiff : Sri. Mahalakshmi.

V/s

Opponent/defendant : Sri. Channashetty and others

**I.A.No.15 U/O.1 Rule 10 Of C.P.C.**

The plaintiff have filed I.A.No.15 U/O.1 rule 10 of CPC. prays to implead proposed defendant as defendant No.10.

2. For the perusal of application in support of affidavit which reveals plaintiff has filed the suit against the defendant for relief of partition and separate possession over the suit property. Further, the plaintiff stated that recently plaintiff came to know the Sy.No.196/3 is belongs to joint family of the plaintiff and defendants which was stand in the name of proposed defendant while perusal of the documents in respect of suit property. Therefore, the plaintiff prays to implead proposed defendant in this case.

3. In spite of services of notice proposed defendant appeared through counsel and filed objection stated that application filed by the plaintiff is not maintainable either under on or facts. Further, the plaintiff filed this application by suppressing the material facts which is not maintainable in the eye of law, plaintiff has filed this suit in the year 2016 and grand father of the proposed

defendant by name Manchiaiah has purchased in Sy.No.196/3 from the first defendant on 24.10.2013 it is while within the knowledge of the plaintiff but plaintiff now came up with the present application to implead proposed defendant as a party which is not maintainable, Moreover the grand father of the proposed defendant executed registered gift deed dated 28.11.2016 in favour of proposed defendant since date of gift deed proposed defendant is in possession and enjoyment of said land and also RTC has been changed in the name of proposed defendant. Further, the plaintiff have not disclose valid reason to excluded the proposed defendant at the time of filing of the suit. Therefore, the proposed defendant prays to dismiss the application.

4. Heard the argument by both counsel of plaintiff and proposed defendant and considering the pleadings of the points arise for consideration.

**1. Whether IA No.15 under Order 1 Rule 10 of C.P.C. filed by the plaintiff is deserve to allowed?**

**2. What is order?**

5. My findings on the above points are as under;

*Point No. 1 : In the Affirmative,*

*Point No. 2 : As per order as follow,*

**-: REASONS :-**

**6. Point No.1:** This is suit for partition and separate possession filed by plaintiff against the defendants. Further, plaintiff come up the present application seeking implead the proposed defendant in this suit, stated that Sy.No.196/3 is belongs to plaintiff and defendant joint family which was stand in the name of proposed defendant. Per contra, the proposed defendant filed objection stating that the suit property purchased by proposed defendant Manchiaiah from the defendant No.1 through registered deed dated 24.10.2013 which is within knowledge of the plaintiff. Thereafter, the grand father of proposed defendant executed registered gift deed on 28.11.2016 in favour of proposed defendant and katha also changed into the name of proposed defendant since

the date of gift deed proposed defendant was in possession and enjoyment of said land. It is admitted fact, the grandfather of proposed defendant has purchased Sy.No.196/3 from defendant No.1 in the year 2013. Moreover, the proposed defendant has not stated the said property exclusively belongs to defendant No.1. Moreover, this is suit for partition filed by the plaintiff against the defendants over the suit properties stating that they are the ancestral joint family of the plaintiff and defendants. Further, the Sy.No.196/3 has purchased by grand father of the proposed defendant in the year 2013 from the defendant No.1. Therefore, taking into the consideration the proposed defendant is the proper party to adjudicate the matter. Moreover, the proposed defendant have liberty to take defence on her behalf. Hence, this Court is the opinion that application filed by the plaintiff is deserves to allow, the proposed defendant is proper party in the suit. Therefore, Point No.1 answer in Affirmative.

**7. Point No.2:-** For the reason discussed supra, I proceed to follow;

**:- ORDER :-**

*I.A.No.15 U/O.1 rule 10 of CPC. Filed by the plaintiff is hereby allowed.*

*The proposed defendant is taken on record, Further, plaintiff is directed to carried out necessary amendment and filed the amendment plaint.*

(Dictated to the Stenographer, directly on computer, revised and corrected by me then pronounced in the open Court, this the **26<sup>th</sup> day of September, 2022**)

*Sri. Sachinkumar Shivapuji.  
I Addl.Civil Judge and JMFC.,  
Malavalli.*