

ORDER ON I.A NO.3

1. Applicants are filed I.A No.3 under order I rule 10 (2) read with section 151 of CPC prays to implead them as defendants in the above case.
2. For the perusal of application in support of the affidavit which revelas that the plaintiff has filed the suit against the defendants for the relief of partition and separate possession. Further it is stated that proposed defendants are the sisters of defendant no.1. The plaintiff intentionally filed the suit without including the proposed defendants which is came to the knowledge of proposed defendants on 18.09.2022 when the villagers talking before wellwishers of proposed defendants. Hence, they having share in the suit property prays to allow the application.
3. Plaintiff counsel filed objection stating that application filed by the plaintiff is not maintainable either under law on facts. Further, the propositus by name Devegowda @ Papegowda

having 7 children. He was died since 23 years back and his wife also died. During the life time of Devegowda had got divided joint family properties to his children. Thereafter his children have been sold some of the properties to the third persons. Further, plaintiff filed the suit claiming share in respect of her father share allotted division among his brothers. Hence, he prays to dismiss the application.

4. Heard both side.
5. Considering the pleadings the following points arise for consideration.
 1. Whether I.A No.3 under order I rule 10 (2) read with section 151 of CPC filed by proposed defendant is deserved to be allowed ?
 2. What order ?
6. My findings of the above points as follows:
Point no.1 : In the negative
Point no.2 : As per the order follows

REASONS

7. **Point No.1:** Admittedly this is the suit for partition and separate possession filed by the plaintiff against the defendants stating that the suit properties are the ancestral and joint family properties of plaintiff and defendants. The defendant no.1 is the father and defendant no.2 to 4 are the sisters and brother of plaintiff. Further the proposed defendants come up with the present application stating that they are the necessary parties in the suit and the defendant no.1 who is the brother of proposed defendants and they have share in the suit properties.

The plaintiff intentionally filed this suit without including them in the present suit. It is pertinent to note here that the plaintiff has filed the suit against her father and brother and sisters in respect of her father's share and she has not filed the suit against all the properties of her grandfather Devegowda @ Papegowda. Moreover said Devegowda having seven children. But in the present case filed by the plaintiff only share of her father not the share towards the properties of Devegowda. Therefore, this court is of the opinion that the application filed by the proposed defendants is not maintainable. Moreover if the proposed defendants having share they have liberty to file separate suit against their brothers and sisters in respect of claiming the properties of their father. But, in the present suit they are not necessary parties. Hence, taking into consideration point no.1 is answered in the negative.

8. **Point No.2:** for the reasons discussed supra I proceed to pass the following;

ORDER

I.A no.3 under order I rule 10 (2) read with section 151 of CPC filed by the proposed defendants is hereby dismissed.

For Cross of PW.1.

Call on 14.08.2023.

**I Addl. Civil Judge & JMFC.,
Malavalli**