

KAMD720001232009

**IN THE COURT OF THE PRL.CIVIL JUDGE AND JMFC AT
SRIRANGAPATNA.**

Dated this 22nd day of June, 2024.

**Present : Sri. HARISHKUMAR. M, B.Com. LLB.
Prl. Civil Judge and JMFC, Srirangapatna.**

FDP No. 08/2009

Petitioner:

Smt. Kamalamma,
W/o Late. Jayaramu,
D/o Laxmaiah,
R/o Chinnayakanahalli Village,
K.Shettahalli Hobli,
Srirangapatna Taluk.

(Rep. by Sri. S. J., Advocate)

V/s

Respondents:

1. Sri. Ningaiah
S/o Late. Boralingaiah
Aged 65 years,
2. Sri. Mahadeva, dead by L.Rs.,
 - 2(a) Smt. Jayamma
W/o Late. Mahadeva,
 - 2(b) Sri. Chandrashekara
S/o Late. Mahadeva,
 - 2(c) Ku. Chetana
D/o Late. Mahadeva,
2(a) to (c) are R/o
Ballenahalli Village



- K.Shettahalli Hobli,
Srirangapatna Taluk.
3. Sri.Manjunatha S/o Ningaiah,
4. Smt. Rathnamma D/o Ningiaah
W/o Kumara,
Respondent No.1, 3 and 4 are
R/o Karighatta Road,
Ganjam, Srirangapatna Town.
5. Smt. Harinakshi @ Sukanaya,
W/o Late. Thagadegowda,
R/o House No.400,
7th main, 3rd stage,
J. P. Nagar,
Bengaluru.
(R-1 to 4 are absent)
(R-5 rep. by Sri. M.N.N., Advocate.)

IA No. 9 CAUSE TITLE

Applicants/ Proposed Respondent No.6 and 7

8. Sri. Guru Prasad J.
S/o Late. Jayaramu
Age: 28 years,
9. Smt. Manasa J.
D/o Late. Jayaramu
Age: 26 years,
Both are R/o Karighatta Road,
Ganjam, Srirangapatna Town.

-Vs.-

Opponent/ Petitioner:

Smt. Kamalamma,
W/o Late. Jayaramu,



— D/o Laxmaiah,
R/o Chinnayakanahalli Village,
K.Shettahalli Hobli,
Srirangapatna Taluk.

1	Provision under which the application is filed	Under Order 1 rule 10 of CPC.
2	Relief sought for	Seeking to implead the proposed respondent No. 6 and 7 as respondent No. 7 and 7 in the petition.
3	The date on which the application is filed	22-08-2023.
4	Number of the application	09
5	The date on which the objections are filed by different opponents	05-10-2023.
6	The date on which the orders were passed on the said application	22-06-2024.

**ORDER ON IA NO. 9 UNDER ORDER 1 RULE 10 OF CPC
FILED BY THE PROPOSED RESPONDENT NO. 6 and 7.**

1. When the matter has been posted for hearing on main petition, the proposed Respondent No. 6 and 7 have filed application under Order 1 Rule 10 of CPC as per I.A. No. 9 seeking to implead them as Respondent No. 6 and 7 in the present petition.
2. The Petitioner herein filed this petition under Section 54 of



CPC seeking to effect partition and separate possession as per the judgment and decreed passed by this Court in OS No. 1/1999 vide judgment dated 03.04.2009.

3. Thereafter this court issued notice to Respondent No.1 to 4 and the same has been served to them, but they have not appeared before the Court and failed to contest the petition. In the mean time the respondent No. 5 was impleaded in the petition and he has chosen to contest the petition. Thereafter both parties have adduced their respective evidence, thereafter the matter was posted for arguments on main petition. At this stage the proposed Respondent No. 6 and 7 have filed application seeking to implead them as respondent No. 6 and 7 as per IA No.9.
4. On the other hand the petitioner has filed objections to IA No.9 and prays to dismiss the IA No. 9.
5. Heard arguments of both sides and perused records of the case.
6. The following points that arise for consideration of this Court:-
 1. **Whether the applicants/proposed Respondent No. 6 and 7 have made out grounds to allow the Interlocutory application No. 9?**
 2. **What order?**



7. Findings of this Court on the above points are as hereunder:

Point No.1:- Affirmative.

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

REASONS

8. **Point No.1:-** It is a matter of record of that the petitioners have filed this petition under Sec.54 of CPC seeking to effect partition and separate possession over the petition schedule properties.
9. The IA No.9 sworn by the proposed Respondent No. 6 and it is stated that, they are the children of second wife of Sri. Jayaramu and hence they are also entitle for share in the suit schedule property. Hence they are the necessary party to the petition since, they are entitle for their share in the suit properties and they prays to allow the IA No. 9.
10. On the other hand the petitioner has filed objections to IA No.9 and stated that, the IA No.9 is not maintainable the proposed respondent No.6 and 7 are not related to family of petitioners and the OS No. 260/2009 was dismissed. It is further stated that, the applicants are not the children of Sri. Jayaramu and there is no relationship between the mother of applicants and Sri. Jayaramu and hence they are not the necessary parties to the petition. The applicants are not produced necessary documents before the court, hence



they are not necessary party to the petition, hence the petitioner herein prays to dismiss the IA No. 9.

11. At this state, it is pertinent to mention that it is necessary to extract the provisions of Order 1 Rule 10 (2) of code of civil procedure, while adjudication the said IA No. 9.

12. The order 1 rule 10 (2) says as follows:

Court may strike out or add parties- “The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the question involved in the suit be added.”

13. In this regard the Hon'ble Apex Court observed that in AIR 1958 SC 886, “The question of addition of parties under Rule 10 is one of judicial discretions, which has to be exercised in view of the facts and circumstances of a particular case. In some cases, it may rise controversy as to the power of court in contra distinction too its inherent jurisdiction or, in other words, of jurisdiction in the limited



sense in its use under section 155.” And also observed that, “Order 1 rule 10 provides for addition of proper or necessary parties and the striking out of improper or unnecessary parties. A person may be added as a party whether as plaintiffs or as defendant when he ought to have been joined as a party or when his presence is necessary in order to dispose of the suit completely and effectively, the words ought to have been joined in sub-rule (2) apparently refers to necessary parties in the sense that the suit cannot be effectively disposed of without their presence in record”.

- 14.** In other words the purpose of this provision is to bring before the court, at the same time, all the persons interested in the dispute so that the dispute may be finally determined at the same time in the presence of all the parties without the delay, inconvenience and expense of several actions and trials and inconclusive adjudication. This provision, thus, confers wide discretion on the court to meet with every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on record. Addition of parties is, however, a judicial discretion which is required to be exercised judiciously. The provisions of Rule 10(2) of order 1 confer very wide powers on the court regarding joining of parties. Such power have to be exercised on sound judicial principles keeping in mind all the facts and



circumstances of the case. Two consideration especially will have to be kept in mind before exercising powers, namely (i) the plaintiff is a dominus litis. He is the best judge of his interest. It is, for him to choose his opponent from whom he claims relief and, normally, the court should not compel him to fight against a person whom he does not want to fight and from whom he claims no relief: and (ii) if the court is satisfied that the presence of a particular person is necessary to effectively and completely adjudicate all the disputes between the parties, irrespective of the wishes of the plaintiff, the court may exercise the power and join a person as party to the suit.

- 15.** The power may be exercised by the court at any stage of the proceedings either upon an application of the parties or even *suo-motu* (of its own motion) and on such terms and conditions as may appear to the court to be just.
- 16.** In the case of Anil kumar V.s Shivanath considering the provisions of order 1 rule 10 (2) the Hon'ble Supreme Court observed that, “ Though the court may have power to strike out the name of a party improperly joined or add a party either on application or without application of either party, but the condition precedent is that the court must be satisfied that the presence of such party to be added, would be necessary in order to enable the court to effectually and



completely adjudicate upon and settle all questions involved in the suit. The object of the rule is to bring on record all the persons who are parties to the dispute relating to the subject-matter so that the dispute may be determined in their presence at the same time without any protraction, inconvenience and to avoid multiplicity of proceedings.

- 17.** Thus, if a special statute makes a person a necessary party to the proceeding and also provides that non-joinder there of will result in dismissal of the petition, the court cannot use the curative powers of order 1 rule 10 as to avoid consequences of non-joinder of such party. The test is not whether the plaintiff agrees or objects to the addition of the party to the suit, but whether presence of such party is required for full and complete adjudication of the dispute.
- 18.** Suffice it to say that in the leading case of Razia V. Sahebzandi anwar begum, the Hon'ble Supreme Court has laid down the following principles regarding the power of the court to add the parties under rule 10(2) of the Code.”
 1. That the question of addition of parties under Rule 10 of Order 1 of the Code of Civil Procedure, is generally not one of initial jurisdiction of the court, but of a judicial discretion which has to be exercised in view of all facts and circumstances of a particular case. But in some



cases, it may raise controversies as to the power of the court, in contradistinction to its inherent jurisdiction, or in other words, of jurisdiction in the limited sense in which it is used in section 115 of the code.

2. That in a suit relating to property, in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest in the subject-matter of the litigation.
 3. Where the subject-matter of a litigation is a declaration as regards status or legal character, the rule of present or direct interest may be relaxed in a suitable case where the court is of the opinion that by adding that party, it would be in a better position effectually and completely to adjudicate upon the controversy; (and)
 4. The cases contemplated in the last proposition have to be determined in accordance with the statutory provisions of sections 42 and 43 of the Specific Relief Act.
- 19.** But the party cannot be added so as to introduce a new cause of action or to, alter the nature of the suit. The power can be exercised by the Court at the stage of trial and that, too without prejudice to the said party's plea of limitation.
- 20.** It cannot be said that, the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effects. It is necessary that the person must be



directly or legally interested in the action, in the answer. The Court is also authorised to strike out any party improperly joined either as a plaintiff or as a defendant in a suit.

- 21.** A bare reading of this provision shows that the Court has power to direct a person to be made a party to a suit if such person ought to have been made a party or that the Court feels the necessity of impleading him with a view to adjudicate upon and settle all the questions involved in the suit effectually and completely. The questions involved in the suit would mean the question concerning the parties to the suit and not with the questions concerning any third party. A party may be a 'necessary' or 'proper' party to a suit. If a party is a 'necessary' party, such a person must be added as a party to the litigation. If such a party is a 'proper' party, then the Court may considered whether his presence is necessary to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit. Order I Rule 9 C.P.C provides that by reason of mis-joinder or non-joinder of the parties, the Court will not dismiss the suit. The Court may deal with the matter in controversy so far as regards the rights and interest of the parties actually before it. However, it has been further provided that Rule 9 of Order I of the Code would not apply where a necessary party is not joined to the suit. In other



words it means that if a necessary party is not before the Court, then the suit may be dismissed. So in dealing with an application under Order I Rule 10(2) of CPC, the Court has to determine whether the party proposed to be added as a party to a suit is one who ought to have been joined as a party. In other words, the Court has to determine whether such a person is a necessary party without whose presence no relief could be granted to the plaintiff or the defendant. In the alternative, the Court has to determine whether the presence of any such person is necessary to decide the disputes between the parties to the suit. In case such a party is only a proper party, then that party can be added if the Court holds that to decide the disputes between the parties effectually and completely, his presence is necessary. The Court has to exercise its discretion while impleading a party in the light of the above provisions.

- 22.** In the instant case the proposed respondent No.6 and 7 claiming that, they are the children of second wife of Sri. Jayaramu. Hence, the proposed respondent No. 6 and 7 are the necessary party to the said petition.
- 23.** On the other hand the petitioner herein disputed the relationship between Sri. Jayaramu and proposed respondents. In order to suffice the said facts the proposed Respondents have not produced documents before the



Court. In order to suffice the same the detail enquiry to be conducted. If the proposed respondent No. 6 and 7 have proved their defence, obviously they are also entitled for the relief of partition. If they failed to prove, then they are not entitled for any relief.

- 24.** In the instant case admittedly the petitioner did not seek any relief in the petition against the proposed respondents. As could be seen from the allegation made in the IA no. 9, the question involved in the petition is between the petitioners and the respondents as well as proposed respondents. In partition suits the determination of shares of both parties are necessary. Hence it is necessary for the determination of the matter in dispute and also enable this court to adjudicate all questions, it is necessary to implead the proposed respondent No. 6 and 7 in this petition and hence applicant/proposed respondent No. 6 and 7 have made out grounds to allow the IA. No. 9. Based on the above observations, this Court is of the opinion that, the presence of the proposed respondent No. 6 and 7 are necessary in order to enable the complete adjudication of this case and to settle all the questions involved in the petition and to avoid multiplicity of proceedings, the application filed by the applicants/respondent No. 6 and 7 deserves to be allowed. Hence this Court answers this point No.1 in the Affirmative.



25. Point No.2:- For the reasons stated in the point No.1, this Court proceed to pass following:-

ORDER

Interlocutory Application No. 9 filed by the applicant/respondent No. 6 and 7 under Order 1 Rule 10 of CPC is hereby allowed.

Accordingly the proposed respondent No. 6 and 7 are hereby impleaded as respondent No. 6 and 7 in this petition.

The advocate for petitioner is hereby directed to carry out the amendment in the cause title and furnish the amended petition within 14 days from this date of order.

No order as to cost in view of the facts and circumstances of the case.

(Typed by me directly on the computer, transcript is corrected and initialled by me and then pronounced by me in the open court on this 22nd day of June, 2024.)

**Prl. Civil Judge & JMFC
Srirangapatna.**

ORDER ON I.A. No. 9

F.D.P. 08/2009



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