

**IN THE COURT OF THE CIVIL JUDGE & JMFC., AT
HEGGADADEVANAKOTE.**

PRESENT : **SRI. SURESHA.S.N** B.A., L.L.B,
Civil Judge & JMFC
Heggadadevanakote

Dated:- 15th day of February 2025

O. S. No.241/2016

BETWEEN : Smt. Chikkamma and others

//VERSUS//

AND : Smt. Eramma and others

I. A. No.II/2025

APPLICANT/S: Smt. Chikkamani
..... (Plaintiff No.3)

V/s

OPPONENT/S: Smt. Eramma and others
..... (Defendants)

**ORDERS ON IA No.II/2025 FILED UNDER ORDER
1 RULE 10 (2) OF CIVIL PROCEDURE CODE**

The applicant/plaintiff No.3 has filed application/I.A.
No.II/2025 under Order I Rule 10(2) of CPC seeking

permission to implead Smt. Chikkamannamma W/o Channanayaka as proposed defendant No.7 in the suit.

2. The applicant/plaintiff No.3 has filed an affidavit in support of I.A No.II, wherein it is stated that the plaintiffs have filed this suit against the defendants seeking for the relief of Partition and separate possession in the suit schedule properties. Now the case is pending for plaintiffs evidence. At the time of filing the suit due to lack of knowledge of the plaintiffs, the name of proposed defendant No.7 was not impleaded in the suit by oversight. Now the proposed defendant No.7 is necessary party to the suit. Hence, the present application is filed. If the application is not allowed, the plaintiffs will be put to great hardship and inconvenience, on the other no injustice would be caused to the other side if the application is allowed. Hence, prays to allow the application.

3. Heard the applicant counsel on IA No.II/2025.

4. The point that would arise for my consideration is:

"Whether the proposed defendant No.7 is just and necessary or proper party to the suit as prayed for?"

5. The above point is answered in the "**Negative**", for the following :

REASONS

6. The suit is filed by the plaintiffs against the defendants seeking for the relief of partition and separate possession in the suit schedule property. After filing the suit, summons was issued to the defendants, on service of suit summons, the defendants appeared before the Court through their counsel and filed written statement. On pleadings of both parties, this Court has framed Issues and the matter was posted for plaintiff evidence. To prove her case, the plaintiff No.3 got examined as PW.1 and got marked Ex.P1 to 6 documents. Thereafter sufficient opportunities given to defendants to lead cross examination of PW.1 and for defence evidence, but in spite of that they did not adduced any

evidence, hence the cross of PW.1 and defendant evidence was taken as nil and the matter was posted for plaintiffs side arguments. At this stage the applicant/plaintiff No.3 has come up with the present application seeking permission to implead proposed defendant No.7 in the suit.

7. Order 1 Rule 10(2) of CPC – regarding striking out or adding parties. The said sub rule is not about the right of a non party to be impleaded as a party, but about the judicial discretion of the Court to strike out or add parties at any stage of the proceeding. The discretion under the sub rule can be exercised either suo-moto or on the application of the plaintiff or the defendant or on an application of a person who is not a party to the suit. The Court can strike out any party who is improperly joined. The Court can add any one as a plaintiff or a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such conditions as the Court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of

the Court, the Court will of course act according to reason and fair play and not according to whims and caprice.

8. The suit is filed in the year of 2016. More than 7 years has been already lapsed. If the plaintiffs wants to implead the proposed defendant as a party in the suit, they could have been filed the present application at the initial stage of the suit. Now the plaintiff No.3 has moved the present application only with an intention to drag the proceedings of the case. If the proposed defendant is the necessary party to the suit the plaintiffs could have been bring the application in the initial stage of the suit or bring them are defendant at the time of objection filed by the defendants. But the plaintiffs kept silence not moved any application till the end of the suit. It is no doubt the court may at any stage of the suit may strike out or add any person as a plaintiff or a defendant. But herein the sufficient time has already been granted to contest the suit of the plaintiff. In case the plaintiffs have come before the court in clean hands they could have bring the

proposed defendant at the earlier stage of suit. Moreover the evidence is already completed and case was posted for plaintiff side arguments. At this stage the applicant has moved the present application. Accordingly point for consideration is answered in the **Negative**. Hence, I proceed to pass the following:

ORDER

IA No.II/2025 filed by the
applicant/plaintiff No.3 under Order I Rule 10
(2) of CPC is hereby dismissed.

*(Dictated to the Stenographer directly on computer, typed by her, the same is corrected, revised, signed and then pronounced by me in the open court, on this the **15th day of February 2025**).*

(SURESHA.S.N)
Civil Judge & JMFC
H.D.Kote.