

KAMS300001382024



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE
AND J.M.F.C AT HUNSUR**

Present: Smt.Anitha, B.A. (Law) L.L.B.,
Addl. Senior Civil Judge & JMFC.,
Hunsur.

Dated this the 10th day of March 2025.

OS No.27/2024

Plaintiffs: 1. Smt.Reehana Banu, W/o Sami Ahamad,
Aged about 58 years,
2. Sri.Shabhaz Ahamad, S/o Sami Ahamad,
Aged about 26 years,
3. Kumari. Sabeeha Fathima,
D/o Sami Ahamad, Aged about 24 years,
4. Sri. Mahammad Khaleel Ulla,
S/o Sami Ahamad, Aged about 22 years,
All are residing at J.M Small Wood
Industries, Hunsur Main Road, Shabbir
Nagara, Hunsur City, Mysuru District.

-Vs-

Defendants: 1. Smt.Saba Fathima, W/o Shamil,
D/o Sami Ahamad, Aged 33 years,
2. Smt.Zaiba Fathima, W/o Nayaj,
D/o Sami Ahamad, Aged 29 years,
R/at Sunnada Beedi, Virajapete Town,
Kodagu District.

3. Sri.Salman Ahamad, S/o Late Sami Ahamad,
Aged about 27 years,
Defendants No.1 and 3 are residing at
No. 1820 Bajar Road, Hunsur City,
Mysuru District.
4. Smt.Saniya Fathima, W/o Mudaseer Ahamad,
D/o Late Sami Ahmed, Aged 25 years,
R/At Shabbir Nagara, Hunsur City.

Proposed Defendant No.5 to 8:

1. Sri.Zabi, S/o Ameer Jan,
Aged about 40 years, R/at Naveen Fancy store,
Shop No.1, Building No.1820, GMS Building,
Bazeer Road, Hunsur City.
2. Sri.Jayaraj, Aged about 52 years,
Pro.Infant Provision Store, Shop No.2,
Building No.1820, GMS Building,
Bazar Road, Hunsur City.
3. Sri.Manju, Aged about 35 years,
Pro.A.P. Modern Stichware, Shop No.3,
Building No.1820, GMS Building,
Bazar Road, Hunsur City.
4. Smt.Sumathi, Aged about 38 years,
Pro.Shine Herbal Beauty Parlour Shop No.4,
Building No.1820, GMS Building,
Bazar Road, Hunsur City.

1.	Provision under which the application is filed	:	Under Order 1 Rule 10 of CPC
2.	Relief sought for	:	To implead the proposed defendants as defendants No.5 to 8 in this case
3.	The date on which the application is filed	:	17.09.2024

4.	Number of the application	:	IA No.II
5.	The date on which the objection is filed by opponent	:	13.02.2025
6.	The date on which the orders passed on the said application	:	10.03.2025

ORDERS PASSED ON I.A.NO.II

When the case is posted for further evidence of PW1, the learned counsel for the plaintiffs filed IA No.II under Order 1 Rule 10 of CPC to implead the proposed defendants as defendants No.5 to 8 in this case.

2. The application is supported with the affidavit of the 1st plaintiff wherein she has stated that, they have filed the suit against the defendants for the relief of partition and separate possession in respect of the suit schedule properties. Now the case is posted for further evidence of PW1 and she has filed present application to implead the necessary parties. The proposed defendants are tenants of suit schedule item No.1 property and the plaintiffs are having equal right over the same. If the proposed defendants are not brought on record and if the application is not allowed the plaintiffs will be put to great hardship. On the other-hand if the application is allowed no hardship or injustice will be caused to the other-side. Hence, prayed to allow all the application.

3. On the other-hand this court issued notice to all the proposed defendants. In spite of service of notice the proposed defendants No.5, 7 and 8 have not appeared before the court and they remained absent. In pursuance of service of

notice, defendant No.6 appeared through his counsel and filed the objection statement contending that, the application is not maintainable under law or on facts. There are no valid grounds made out to bring him on record. The application is filed with an intention to harass the proposed defendants. The proposed defendants is neither necessary party nor formal party to the suit. Since he is only a tenant under the defendants having no right, title, interest over the suit schedule property. Hence, prayed to dismiss the application with exemplary costs.

4. Thereafter, heard arguments addressed by learned counsel for the plaintiffs and proposed defendant No.6 and perused the case papers. After hearing the arguments and on perusal of the case papers, the points that arise for consideration are as hereunder:

POINTS

1. Whether the proposed defendants are proper and necessary parties to the suit for effectually adjudicating the matter in dispute?
2. What order?

5. The findings of the above points are as hereunder:

Point No.1: In the Negative

Point No.4: As per the final order
for the following:

REASONS

6. **Point No.1:-** This is the suit filed by the plaintiffs against the defendants seeking the relief of partition and separate possession over the suit schedule properties. It is an admitted fact that, one Sameer Ahamad is the original

propositus of the family who has got two wives ie., Reehana Banu and Shahiba Sulthana. Shahiba Sulthana is no more and Reehana Banu is the 2nd plaintiff in this suit. Defendants No.1 to 4 are the children of Sameer Ahamad from his 1st wife Shahiba Sulthana and plaintiffs No.2 to 4 are the children of Sameer Ahamad through his 2nd wife Reehana Banu. As per the plaintiffs the suit schedule properties are originally belong to Sameer Ahamad in which they are having equal share. Sameer Ahamad was not well and at that time he had intention to equally divide the properties among his children from both wives. But the defendants with the instigation of their maternal uncle got created a Will dated 05.02.2009 behind the back of the plaintiffs. As such they have sought for partition in the suit schedule properties.

7. After filing of the suit the court issued summons to the defendants. Defendants No.1 to 3 appeared through their counsel and filed the written statement and defendant No.4 has not chosen to appear before the court and place exparte. The present application is filed when the case is posted for further cross-examination of PW1. It is the specific case of the plaintiffs that, the proposed defendants are tenants in respect of suit schedule item No.1 property. The affidavit averments of the 1st plaintiff itself goes to show that, the proposed defendants are having no independent right over the suit schedule item No.1 property but they are only tenants in the suit schedule item No.1 property. At the most the plaintiffs can seek for partition in the rent received by the defendants and

they can also seek for accounts in respect of suit schedule item No.1 property. But the plaintiffs have not sought for said reliefs. The proposed defendants being the tenants are not at all necessary parties to the suit and their presence is not at all necessary to effectually adjudicate the matter in dispute. Hence, point No.1 is answered in the Negative.

8. **Point No.2:** In view of the reasons discussed above this court proceeds to pass the following:

ORDER

I.A.No.II filed by the plaintiffs under Order 1 Rule 10 of CPC is hereby rejected with costs of Rs.200/-.

(Dictated to the Stenographer, transcribed and computerized by her on the computer, transcript corrected and pronounced by me in the open court on this the 10th day of March 2025.)

Sd/-

(ANITHA)

Addl. Senior Civil Judge and JMFC.,
Hunsur.