

KAMS300007862023



**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 31<sup>st</sup> day of August, 2024.**

**OS No.127/2023**

- Plaintiffs:
1. Mohammed Saalar, S/o Late Mohammed Isaaq, Aged about 72 years, R/at Neeha Hotel, Muslim Block, Hunsur Town.
  2. Rahila Banu, D/o Late Mohammed Ameer, Aged about 28 years, R/at Bettadadpura Village & Hobli, Periyapatna Taluk.
  3. Thanjila Banu, D/o Late Mohammed Ameer, Aged about 25 years, R/at Laal band Street, Hunsur Town.
  4. Afzal, S/o Late Khaleel Ahammed, Aged about 40 years,
  5. Salma Banu, D/o Late Khaleel Ahamed, Aged about 38 years,
  6. Asma Banu, D/o Late Khaleel Ahammed, Aged about 36 years,
  7. Akmal, S/o Late Khaleel Ahammed, Aged about 34 years,  
4<sup>th</sup> to 7<sup>th</sup> plaintiffs are R/at Leela theatre, V.P.Bore, Hunsur City.

8. Thanzim Ahammed, S/o Late Iqbal Ahammed, Aged about 26 years,
9. Nazim Ahammed, S/o Late Iqbal Ahammed, Aged about 24 years,
10. Sakila Fathima, D/o Late Iqbal Ahammed, Aged about 23 years,

8<sup>th</sup> to 10<sup>th</sup> plaintiffs are R/at # 1580, Muslim Block, Hunsur Town.

-Vs-

- Defendants:
1. Nasim Unnisa, D/o Late Mohammed Isaaq, Aged about 65 years,
  2. Ajim Unnisa, D/o Late Mohammed Isaaq, Aged about 52 years,
  3. Saleem Unnisa, D/o Late Mohammed Isaaq, Aged about 51 years,
  4. Sameer Ahmmed, S/o Late Ameer Jaan, Aged about 28 years,

All are R/at #1580, Muslim Block, Hunsur Town.

1.	Provision under which the application is filed	:	Under Order 1 Rule 10(2) of CPC
2.	Relief sought for	:	To implead the proposed defendants
3.	The date on which the application is filed	:	02.11.2023
4.	Number of the application	:	IA No.II
5.	The date on which the objection is filed by opponents	:	16.01.2024
6.	The date on which the orders passed on the said application	:	31.08.2024

**ORDERS PASSED ON IA NO.II**

The learned counsel for the plaintiffs filed IA No.II under Order 1 Rule 10(2) of CPC seeking to implead the proposed defendants as defendants No.5 and 6 in this suit.

2. The application is supported with the affidavit of the 1<sup>st</sup> plaintiff wherein he has stated that, the proposed defendants are purchasers of agricultural lands in Sy.No.22/2 measuring 5 acres, 0.078 guntas Nanjanayakanahalli Village, Kasaba Hobli, Hunsur Taluk through registered sale deed dated 27.03.2015 from his mother Ajeejunnisa @ Mukamarnisa. It is further stated that, they are tenants in common and their mother had no locus-standi to sell the property. They are governed by Mohammeden Law and they could not able to implead the proposed defendants due to oversight. If the application is allowed no hardship is going to caused to the proposed defendants, on the other-hand if the same is not allowed the plaintiffs will be put to great hardship. Hence, prayed to allow all the application.

3. After filing of this application this court issued notice to proposed defendants No.5 and 6 and they appeared through their counsel and filed the objection contending that, they have purchased the property from the mother of the plaintiffs and Khata is standing in the their names. They are the owners and in possession of the said properties. It is also contended that, the plaintiffs on 09.02.2015 have executed consent deed in favour of the proposed defendants stating that, they have no objection for the sale. In spite of the same in order to get wrongful gain this application is filed. If the applications are

allowed they will be put to great hardship. Hence, prayed to dismiss the application with costs.

4. Thereafter, heard arguments addressed by learned counsels for the plaintiffs and proposed defendants 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 for effectually adjudicating the matter in issue?
2. What order?
5. The findings of the above points are as hereunder:

Point No.1: In the Affirmative

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

### **REASONS**

6. **Point No.1:** This is the suit filed the plaintiffs against the defendants seeking the relief of partition and separate possession of their 2/8<sup>th</sup> share in the suit schedule properties. During the pendency of the suit the defendants filed IA No.IV under Order 7 Rule 11(d) of CPC which came to be rejected by this court. It is an admitted fact that, the plaintiffs and the defendants are governed under Mohammeden Law and the plaintiffs and the defendants are tenants in common. It is also admitted fact that, principles of tenants in common applies to the parties. The present application is filed to implead the proposed defendants as defendants No.5 and 6 in the suit. It is an admitted fact that,

the proposed defendants are purchasers of property from the mother of the plaintiffs. As per the plaintiffs their mother had no absolute right to execute the sale deed infavour of proposed defendants. On the other-hand the proposed defendants contended that, already the plaintiffs have executed consent deed in their favour and now they cannot object for the sale deed executed by the mother of the plaintiffs. It is to be noted that, whether the plaintiffs have executed any consent deed in favour of the proposed defendants is to be determined after the trial. Since, this is the suit for partition it is the settled principles of law that, all the parties shall be included in the suit. In the absence of proposed defendants the suit cannot be effectively adjudicated. Therefore, this court comes to conclusion that, the proposed defendants are proper and necessary parties to this suit. Accordingly, point No.1 is answered in the affirmative.

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

**ORDER**

IA No.II filed by the plaintiffs under Order 1 Rule 10(2) of CPC is hereby allowed with costs of Rs.200/-.

Accordingly, the plaintiffs are permitted to implead the proposed defendants as defendants No.5 and 6 in this suit.

(Dictated to the Stenographer directly on the computer, corrected and pronounced by me in the open court on this the 31<sup>st</sup> day of August, 2024)

**(Anitha)**

Addl. Senior Civil Judge and JMFC,  
Hunsur.