

KAMS300009252019



**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 11th day of June 2024.

OS No.81/2019

Plaintiff: Smt.Susheela Bai,
W/o Late Krishnoji Rao,
D/o Late Shankar Rao,
Aged about 65 years,
Near Manjunatha Temple,
B.M.Road, Hunsur.

-Vs-

Defendants: 1. Smt.Chandru Bai, D/o Late Shankar Rao,
Aged about 74 years,
2. Sri.Madhoji Rao, S/o Late Shakar Rao,
Aged about 70 years,
3. Sri.Tukaram Rao, Dead by Lrs,
3(a). Sathyavathi Bai, W/o Late Tukaram Rao,
Aged about 46 years,

3(b). Sachin, S/o Late Tukaram Rao,
Aged about 21 years,

3(c). Harsha, S/o Late Tukaram Rao,
Aged about 19 years,

Defendants No.3(a) to 3(c) are residing at
No.61, J.T.K.Layout, Near RMP Quarters,
5th Stage, Kuvempu Nagar, Mysuru.

4. Smt.Saroja Bai, D/o Late Shankar Rao,
Aged about 52 years,

Defendants No.1 to 4 are residing at
D.No.3577, Near Maruthi Petrol Bunk,
B.M.Road, Hunsur.

5. Smt.B.G.Nagarathna, D/o Late Gopalaiah
Aged about 55 years, R/at D.No. 291,
Store Street, Hunsur City, Hunsur.

1.	Provision under which the application is filed	:	Under Order 1 Rule 10(2) R/w Section 151 of CPC
2.	Relief sought for	:	Impleading the parties
3.	The date on which the application is filed	:	23.01.2024
4.	Number of the application	:	IA No.VI
5.	The date on which the objection is filed	:	15.04.2024
6.	The date on which the orders passed on the said application	:	11.06.2024

ORDERS PASSED ON I.A.NO.VI

The Leaned counsel for the plaintiff filed IA.No.VI under Order 1 Rule 10(2) R/w Section 151 of CPC seeking for impleading proposed defendants as defendants No.6 to 8 in the suit.

2. The application is supported with the affidavit of the plaintiff wherein she has stated that, she filed the suit against the defendants seeking the relief of partition and separate possession and recently she came to know that her brother Late Tukaram Rao entered into registered sale agreement with the proposed defendants in respect of RS No.99/2 measuring 30 guntas which is item No.1 of suit schedule property and it is not binding upon her since the suit is filed in the year 2019 and document is executed on 16.07.2022. She has further stated that the transfer is lis-pendence. If the proposed defendants are not impleaded it will lead to multiplicity of proceeding and their presence is necessary for proper adjudication of the matter. Hence, prayed to allow the application.

3. After filing of the application this court issued notice to the proposed defendants. In pursuance of service of notice proposed defendant No.6 appeared through his counsel and filed the objection. Proposed defendants No.7 and 8 though served with the notice not appeared and remained absent.

4. In the objection proposed defendant No.6 contended that the application is not maintainable under law or on facts. The plaintiff is not entitled for any relief. Originally the proposed defendant No.6 is the owner in possession of RS No.99/2 measuring 30 guntas and he has purchased it from the 3rd defendant and his family members on 19.08.2020 and he is a bonafide purchaser. The plaintiff has got no right over the suit schedule property and by creating the documents filed false suit. The proposed defendants are not proper and necessary parties to the suit. Mere hardship will be not be a ground to implead them. It is further stated that, the plaintiff has sworn to false affidavit. Hence, prayed to dismiss the application with exemplary costs.

5. Thereafter, heard arguments addressed by learned counsel for the plaintiff. The learned counsel for the proposed defendant No.6 remained absent and not addressed the arguments. Perused the case papers and the points that arise for consideration are as hereunder:

POINTS

1. Whether proposed defendants are proper and necessary parties to this suit for effectually adjudicating the matter in dispute?
2. What order?
6. The findings on the above points are as hereunder:

Point No.1: In the affirmative

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

REASONS

7. **Point No.1:** The plaintiff has filed the suit against the defendants seeking the relief of partition and separate possession of her 1/5th share in the suit schedule properties. It is her specific case that herself and defendant No.1 to 4 are the children of Shankara Rao. As per the plaintiff the suit schedule properties are the ancestral and joint family properties of herself and defendants No.1 to 4. During the pendency of suit defendant No.3 reported dead and his legal heirs were brought all record. Further, alleged that defendant No.3 without having absolute ownership created some documents. In the written statement the legal heir of defendant No.3 specifically denied the case of the plaintiff. However, they have contended that, there is partition between the sons of Shankara Rao during 1985 and Shankara Rao was a studious person and in order to divide the property he has executed an registered Will dated 05.12.2000 which is in the form of a partition and in the said document the plaintiff was allotted with 20 guntas of land in Sy.No.99/6 of Doddahunsur village and plaintiff filed the suit by suppressing the said facts. Hence, the legal heirs of defendant No.3 prayed to dismiss the suit.

8. On 23.11.2023 this court framed the issues and when the case was posted for plaintiff evidence this application came to be filed. In the affidavit the plaintiff stated that during the pendency of the suit defendant No.3 executed documents

in favour of proposed defendants which is hit by principles of lis pendence. Admittedly, in the objection statement proposed defendant No.6 contended that, he has purchased suit schedule item No.1 property bearing Sy.No.99/2 measuring 20 guntas from the 3rd defendant and his family members on 19.08.2020. The suit is filed on 15.07.2019 and the said transfer was during the pendency of the suit. Further it is necessary to note that proposed defendant No.7 and 8 though served when the notice not chosen to oppose the application. The proposed defendants are proper and necessary parties for effectually adjudicating the matter in dispute. As per the objection statement item No.1 property is standing in the name of proposed defendant No.6. It shows that his interest is involved in the suit schedule properties. Therefore in their absence no adjudication of the matter in dispute could be made. Therefore, this court comes to the conclusion that the proposed defendants are proper and necessary parties to the suit. Furthermore, if they are impleaded definitely they will get an opportunity to file written statement and to defend the suit. Therefore, point No.1 is answered in the affirmative.

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

ORDER

I.A.No.VI filed by the plaintiff under Order 1 Rule 10(2) R/w Section 151 of CPC is hereby allowed with costs of Rs.150/-.

Accordingly, the plaintiff is permitted
implead the proposed defendants as
defendants No.6 to 8 in the suit.

(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 11th day of June 2024.)

(ANITHA)

Addl. Senior Civil Judge and JMFC,
Hunsur.