

**ORDERS ON IA No.7 FILED U/O 1 RULE 10(2) r/w/s 151 OF  
CPC**

The applicant has made the instant application seeking his impleadment in the petition on the grounds that the respondents 1 and 2 have executed a registered Will in favour of the applicant in respect of their share in the suit schedule properties on 09.03.2015 and the 1<sup>st</sup> respondent who is the grand mother of the applicant was passed away on 16.10.2017. The 5<sup>th</sup> respondent knowing fully well about execution of the said Will filed an application for allotment of share as 1/5<sup>th</sup> share instead of 1/6<sup>th</sup> share to knock off the property bequeathed by the grand-mother of the applicant through the said Will. After knowing this the applicant has filed this application to implead him in the petition as he is a necessary party in the petition in view of the Will executed by the 1<sup>st</sup> respondent and he is entitled for 1/6<sup>th</sup> share of his grand-mother. This application is resisted by the petitioner contending that it is groundless. The respondents 1 and 2 are allotted 1/6<sup>th</sup> share in OS No.09/2008 and the 1<sup>st</sup> respondent is an aged lady and is not able to move around and lost her eye sight at the time of executing the alleged Will and the 2<sup>nd</sup> respondent is an handicapped person by birth and has no worldly knowledge. They have not executed the alleged Will. The proposed respondent colluded with the 3<sup>rd</sup> respondent and got created the Will. Shares are not yet allotted

and the 1<sup>st</sup> respondent is died and one of the executors of the will is alive. Therefore, question of impleading the applicant in the petition does not arise. Accordingly, it is prayed for dismissal of the application with cost.

2. I have heard the learned counsel appearing for the parties and perused the material on record.

3. Points that arise for consideration of the court are:

1. Whether the applicant/proposed respondent has made out grounds to allow the instant applicant?

3. What order?

4. Findings of this court on the above points are:

Point No.1: in affirmative and

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

### REASONS

5. Point No.1: the material on record reveals that when the case was set down for objections to IA 5 and 6 the present application was filed seeking impleadment of the applicant on the grounds that the respondents 1 and 2 have executed a registered Will in favour of the applicant in respect of their share in the suit

schedule properties on 09.03.2015 and the 1<sup>st</sup> respondent who is the grand mother of the applicant was passed away on 16.10.2017. The applicant is a necessary party in the petition in view of the Will executed by the 1<sup>st</sup> respondent and he is entitled for 1/6<sup>th</sup> share of his grand mother. As noted above, the petitioner has resisted the application stating that the respondents 1 and 2 have not executed the alleged Will in favour of the applicant. That apart, one of the executants of the Will is alive. Hence, the applicant is not a necessary party.

6. As could be seen from the original Will produced by the applicant the respondents 1 and 2 have executed a Will bequeathing their shares in the suit schedule properties in favour of the applicant and admittedly the 1<sup>st</sup> respondent is no more. Hence, the Will has come into force from the date of death of the 1<sup>st</sup> respondent in respect of her share and the applicant will get right on the share of the 1<sup>st</sup> respondent until the Will is disproved. Therefore, in his absence the petition cannot be disposed off and he is the necessary party in the present petition and his right could be decided after conducting enquiry in respect of right of the applicant by virtue of the alleged Will. Until the right of the applicant is decided the IA 5 and 6 cannot be disposed off. Accordingly, they should be kept in abeyance till further orders. In the circumstances, the application needs to be allowed and no hardship would be

caused to the petitioner if the application is allowed. Thus, the point No.1 is answered in affirmative.

7. Point No.2: in view of the findings arrived on the point No. 1, I proceed to pass the following:

**O R D E R**

The IA No.7 filed under Order 1 Rule 10 (2) r/w/s 151 of CPC is hereby allowed. There shall be no order as to cost. The IA 5 and 6 are kept in abeyance till further orders by deferring passing of orders on them.

Call on for amendment and amended petition by 03.03.2021.

Sd/-  
Addl. Senior Civil Judge & JMFC  
Hunsur