

KAMS400039382016



**IN THE COURT OF
SENIOR CIVIL JUDGE AND JMFC AT
KRISHNARAJANAGARA, MYSURU
Presided Over by Sujatha Madiwalappa Sambrani**

Dated this the 7th day of April 2022

O.S./43/2016

Plaintiffs : Smt. Kamma and others
Vs

Defendants : Sri. Srinivasachari and others

: I.A.NO.7 :

APPLICANT: *Smt. Sharadamma,
W/o late B.N.Narayanachari,
Aged 76 years,
R/at Kommegowdanakoppalu village,
Halebeedu Post, Bilikere Hobli,
Hunsur Taluk, Mysuru District.*
.... Proposed D.22

Vs.

OPPONENTS: 1. *Smt. Kamma and others
W/o. Late Chikkaputtachari,
Aged about 75 years,*

2. *Somashekar P.C.
S/o. Late Chikkaputtachari,*

Age 56 years,

3. Yashodha,
W/o Chinakrishnachar,
Age 53 years,
R/at Kanuganahalli village,
Kasaba Hobli,
K.R.Nagar Taluk.

4. Rathna,W/o Sannahaidachar,
Age 51 years, R/at Edahalli village,
Yelwala Hobli, Mysuru Taluk.

5. Shivamurthy P.C. 49 years,
S/o Chikkaputtachari,

6. Prabhakara P.C. **DEAD** by Lrs.

6A.Avinash, 15 years, Minor,
S/o late Prabhakara P.C.
Rept. By his grandmother Smt.
Kalamma i.e., 1st pl.

Pls No.1, 2, 5, 6 and 6A
are R/at Hosapenjhalli village,
Nalluru Pala Post, Hunsur Taluk.
Mysuru District.

..... Plaintiffs.

: ORDER ON I.A.No.7 :

The proposed defendant No.22 has filed this application under Order 1 Rule 10(2) R/w section 151 of CPC.,seeking impleading her in the suit as proper and necessary party for the adjudication of the partition suit.

2. On the other hand either the plaintiffs or defendants have not objected this application by filing objections.

3. Heard and perused the record.

4. The point that arise for my consideration are as follows:

1. Whether the application filed by the proposed defendant No.22 under Order 1 Rule 10(2) CPC., seeking impleading her in the suit as proper and necessary party for the adjudication of the partition suit deserves to be allowed?

2. What order?

5. My findings on the above points are as follows:

Point No.1 : In the Affirmative

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

REASONS

POINT No.1:-

6. The plaintiffs have filed this suit seeking partition and separate possession of suit schedule properties against the defendants. When the matter is pending for plaintiffs' evidence , the applicant has filed this application seeking impleading her as

proper and necessary party to the present suit by filing an affidavit.

7. The applicant has sworn to the affidavit and submitted that the plaintiffs have filed this suit for partition and separate possession in respect of the ancestral and joint family nucleus of late Narayanachari. The said Narayanachari married to Smt. Kamma and out of their wedlock they begotten a daughter by name Neelamma. The said Neelamma is none other than the mother of this proposed defendant. After the death of Smt. Kamma said Narayanachari married Smt. Lashmamma and out of the second wedlock they begotten two sons by name Dasachari and Chikkaputtachari. The plaintiffs are the legal heirs of Chikkaputtachari. The defendants No.1 to 8 are the legal heirs of Dasachari.

8. It is further submitted that, recently when the applicant has attend the marriage occasion during the 2nd week of August 2021, she came to know that the legal heirs of Chikkaputtachari has filed this suit for partition and separate possession in respect of the suit schedule properties. The plaintiffs who are having the knowledge about the daughter of

Neelamma born out of the wedlock of Narayanachari and Smt. Kamma, but the plaintiffs have not included her in the present suit. Hence, it is necessary to implead her as defendant No.22 who is a proper and necessary party for the adjudication of this suit.

9. Before going to discussion of the case on hand, it is necessary to go through the provisions of **Order 1 Rule 10(2) of CPC.**,

*“ A necessary party is one, in whose absence the Court cannot pass an effective decree at all. Proper party is one, whose presence before Court is necessary to ensure that all matters in dispute are effectually or completely determined. The only reason which makes it necessary to make a person a party to action is that he should be bound by the ensuing result and the question should be settled in the suit. Therefore, it must be one, which cannot be effectively settled unless he is a party.”, It is so held in the decision reported in **ILR 1978 Kar 114.***

10. This is a suit for partition and separate possession and in a suit for partition the following persons are necessary parties to the suit. In a judgment reported in **1991 Civil court cases, page 755 (P & H)**, " *The plaintiff in a partition suit should implead as defendant for the following:-*

- a) The heads of all branches (c)*
- b) Female who are entitled to a share on partition.*
- c) The purchasers of a partition of the plaintiffs share, the plaintiff himself being a coparcener.*
- d) If the plaintiff himself is purchaser from a coparcener, his alienee;*

The above are necessary parties and if any of them is not joined the suit is liable to be dismissed".

11. In this application the applicant has stated that she is the daughter of first wife of deceased Narayanachari. Hence, she appears to be one of the member of the joint family of deceased Narayanachari. Though the plaintiffs have produced the Genealogical-Tree, but the name of this applicant do not find a place. The plaintiffs might have left her name for the reasons best known to them. Moreover, this application is not objected by

either plaintiffs or defendants. Hence, the presence of the proposed defendant Smt. Sharadamma appears to be proper and necessary party to the present suit as she is one of the member of the family of deceased Narayanachari. Hence, the application filed by the applicant seeking impleading her as a party to the suit deserves to be allowed. Accordingly. I answer Point No.1 in the **Affirmative.**

POINT NO.2:-

12. For the reasons stated above, I pass the following:

O R D E R

*IA.7 filed by the applicant
U/O. 1 Rule 10(2) R/w section 151
of CPC., is allowed.*

*For amendment Plaintiff and to
furnish amended plaint.*

(Dictated to the stenographer, transcribed and typed by her, added some paragraphs on computer, corrected and then pronounced by me in the open Court, on **7th April 2022**)

(Sujata M. Sambrani)
Senior Civil Judge & JMFC
K.R.Nagar.

