

KAMS400039382016



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

Dated this the 5th day of December 2022

O.S./43/2016

PLAINTIFFS : Smt. Kamma and others
Vs

DEFENDANTS: Sri. Srinivasachari and others

: I.A.NO.9 :

APPLICANTS: 1. Sri. Somachari, 66 years,
S/o late Narayanachari,
R/at Kommegowdanakoppal
Village, Halebeedue Post,
Bilikere Hobli, Hunsur Taluk,
Mysuru District.

2. Smt. Sudhamani, 47 years,
D/o. Narayanachari,
R/at No.1949, 8th Cross,
Janathanagar,
Mysuru Town.

Defs.No.24 & 25

Vs.

- OPPONENTS:** 1. Kamma, 75 years,
W/o late Chikkaputtachari,
2. Somashekara P.C., 56 years,
S/o late Chikkaputtachari,
3. Yashodha, 53 years,
W/o Chinakrishnachari,
R/at Kanuganahalli village,
Kasaba Hobli, K.R.Nagar Taluk.
4. Rathna, 51 years,
W/o. Sannaiahdachar,
R/at Edahalli village,
Yelawala Hobli, Mysuru Taluk.
5. Shivamurthy P.S. 49 years,
S/o Chikkaputtachari,
6. Prabhakara P.C. Dead by L.Rs.
6A. Avinash, 15 years, Minor
S/o late Prabhakara P.C.
Rept by his grandmother Smt.
Kalamamma i.e. 1st plaintiff
--- P.1, 2, 5, 6 and 6A are R/at
Hosa Penjahalli village, Nallurpala
Post, Hunsur Taluk,
Mysuru District.

: ORDER ON I.A.No.9 :

The proposed defendant No.24 and 25 have filed this application under Order 1 Rule 10(2) R/w section 151 of CPC., seeking impleading them in the suit as proper and necessary parties for the adjudication of the partition suit.

2. On the other hand the plaintiffs have filed 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.24 and 25 under Order 1 Rule 10(2) R/w section 151 of CPC., seeking impleading them 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 applicants have filed this application seeking impleading them

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

7. The application annexed with the affidavit sworn by the proposed defendant No.24 stating that one Narayanachari married with two wives by name Kamma and Lakshamma. The 1st wife had only one daughter by name Neelamma W/o Sangachari. The said Neelamma is the grand mother of defendants No.24 and 25. The said Narayanachari died leaving behind the plaintiffs and defendant No.1 to 7 along with his daughter Neelamma. One Dasachari is not the sole son and he had brother by name Chikkaputtachari who is the husband of plaintiff No.1. As the Dasachari is not the sole owner of the suit property and he was the member of the joint family, this matter was suppressed by the plaintiffs and defendants No.1 to 7 with an intention to defeat their share fraudulently by creating the sale deed in the name of defendants No.20 and 21. There was no division of family as well as property of late Narayanachari and there is a threat to their property right through the sham document. They came to know the pendency of this suit, recently when they visited the village on the festival occasion. Their presence is just and necessary as

they are the legal heirs of Neelamma. Hence prayed to allow the application.

8. On the other hand, the plaintiffs have filed objections and admitted that the proposed defendants No.24 and 25 are the legal heirs of Narayanachari along with defendant No.23. The said Narayanachari died leaving behind the defendant No.23 and proposed defendants No.24 and 25. It is further submitted by the plaintiffs that, with this application the defendants only to protract the proceedings. The proposed defendants No.24 and 25 along with defendant No.23 are the great grand children of Narayanachari. Hence in order to grab the available properties, they have filed this application. Hence prayed to dismiss the application.

9. Before going to discussion of the case on hand, it is necessary to go through the following decision on 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 necessity 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 with respect of the suit schedule properties. The proposed defendants No.24 and 25 are necessary parties to the suit. In this regard I would like to rely upon the decision 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 applicants have stated that they are the grand children of Smt. Neelamma W/o. Singachari, who was the only daughter to late Narayanachari. The said Narayanachari died leaving behind the plaintiffs and defendants No.1 to 7 along with his daughter Smt. Neelama. Late Dasachari is not the sole son and he had brother late Chikkaputtachari who is the husband of 1st plaintiff. The plaintiffs filed the objections admitting the relationship with the proposed defendants with late Narayanchari and also admitted that they are the legal heirs of late Narayanachari along with the defendant No.23. During the arguments, the learned counsel for the plaintiffs argued that the applicants are the legal heirs of 4th generation. As per Hindu Law, the legal heirs up to 4th generation is permitted to come on record. Hence, the proposed defendants No.24 and 25 being the legal heirs of Narayanachari are appears to be proper parties to the present suit and their presence is required for just and complete adjudication of the dispute between the parties.

Hence, the application filed by the applicants seeking impleading them as parties 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.9 filed by the proposed defendant No.24 and 25 U/O. 1 Rule 10(2) R/w section 151 of CPC., seeking impleading them in the suit as proper and necessary party for the adjudication of the partition suit, is allowed.

For amended Plaint and to carry out amendment.

(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 this the **5th December 2022**)

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

