

**IN THE COURT OF THE PRL.CIVIL JUDGE & JMFC.,
KRISHNARAJANAGAR**

PRESENT

**SRI.SRINATH.K, B.A.L., LL.B.,
PRL. CIVIL JUDGE & JMFC., K.R.NAGAR**

F.D.P.No.4/2018

DATED THIS THE 18TH DAY OF FEBRUARY 2020

PETOTIONER/S:

C.C. Sathishkumar

V/s

RESPONDENT/S :

Chandregowda and others,

PARTIES TO IA.No.V

APPLICANTS : 1. C.C. PRATHAP
2. C.C. KAVYA

V/s

OPPONENT : C.C. SATHISHKUMAR

ORDERS ON IA-II

APPLICATION U/O 1 R 10(2) R/w 151 OF CPC

The applicants by name Prathap and Kavya, son and daughter of Chandregowda, respondent no. 1 herein filed application, prayed to implead them as respondent no. 6 and 7, they are the children of Chandregowda through second

wife. Thereby they are having share in the suit schedule properties, prayed to allow the application.

2. The petitioner filed objections to the above application, contended that the defendant no.6 and 7 are not necessary parties, they have not challenged the judgment and decree in OS 141/2015, they are children of 1st defendant through second wife. The first wife of Chandregowda is alive hence the proposed defendants are not entitled in share over the suit schedule properties, prayed to reject the application.

3. Heard and perused the same.

4. The following points that arise for my consideration:

1) Whether the applicants are proper and necessary parties to decide this petition?

2) What order?

My finding on the above points are as follows:

POINT No.1 : In the affirmative.

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

REASONS

5. POINT No.1:

This petition filed by the petitioner, to draw final decree in pursuance of the preliminary decree in OS 141/2015. The said suit was decreed declaring that the plaintiff is entitled 1/3rd share over the suit schedule properties. On perusing the judgment in OS 141/2015, the petitioner has not arrayed the proposed respondent parties to the said suit. On perusing the objections petitioner admitted that they are children of first respondent with second wife.

Under the said circumstances the proposed respondents are proper and necessary parties to adjudicate the petition. In a suit for partition all the family members are proper and necessary parties to decide the suit. Non inclusion of the family members to the suit, the suit is bad for non joinder of necessary parties. Admittedly, the applicants are children of first respondent Chandregowda. The applicants state they are step children of Chandregowda, the same has been admitted by the petitioner in his objection. The contention of the petitioner that the applicants are step children of first respondent. Thereby they have not entitled any share over the suit schedule properties. Whether the applicants are entitled any share or not over the suit property has to be decided after arriving the parties to the suit. Before arriving the parties to the suit, the entitlement of the parties will not be decided in their absence. The applicants are necessary parties, they are entitled equal share along with illegitimate children of Chandregowda in the property of Chandregowda. In view of specific Bar U/Sec. 16(3) of the Hindu marriage Act, the legitimate children are entitled share in their parents property and they are not entitled share in the ancestral properties. The same has been upheld by the Hon'ble Apex court in number of decisions. The applicant placing reliance on the decision of the Hon'ble Apex Court-

(2011) 11 SCC 1:(2011) 3 SCC (Civ) 581

Revannasiddappa and another V/s
Mallikarjun and others.

A. Hindu Marriage Act, 1955 – S. 16(3) (as amended by Act 68 of 1976) – Children of void or voidable marriages- Held, entitled to only their parent's property, whether self-acquired or

ancestral, falling to parents' share after partition – But partition of joint family property can be sought by them only after their parents' death – However, due to contrary view taken by Supreme Court on S.16(3) in Jinia Keotin, (2003) 1 SCC 730, Neelamma, (2006) 9 SCC 612 and Bharath Matha, (2010) 11 SCC 483, matter referred to larger Bench.

Wherein the Hon'ble Apex Court has not considered the earlier view of the Hon'ble Apex court in number of decisions in respect of Sec. 16(3) of the Hindu Marriage Act 1956. The said matter has referred to the full bench to decide the same. However, the Hon'ble Apex Court has not yet constituted full bench, thereby the matter has not decided by the Hon'ble Apex Court. At this stage, the applicants are proper and necessary parties to adjudicate the petition on merits. Non arriving the applicants as parties to the suit is fatal to the case of the petitioner.

6. The learned counsel for the petitioner vehemently argued and submit that the applicants can challenge the judgment and decree in OS 141/2015, they have not challenged the same, filed this application. Admittedly the applicants are not parties in OS 141/2015. Thereby the question of challenging the said judgment by the applicants does not arise. Further, the learned counsel for the petitioner argued that in this final decree proceedings the applicants cannot be impleaded as a respondent. The final decree proceedings are the continuation of the original proceedings, in the final decree proceedings rights of the parties can be decided if necessary the court can alter the preliminary decree or draw fresh preliminary decree, there after the final decree can be drawn. It is well settled that any

number of preliminary decree can be drawn. Under the said circumstances the arguments of the petitioner counsel that in the final decree proceedings applicant cannot be arrived, parties does not holds any water. In view of the above discussions, the applicants are proper and necessary parties to adjudicate this petition, whether the applicants are entitled for share in the ancestral property or in the property of first respondent has to be adjudicated after full pledged trial. Accordingly, I answer point No.1 in the **Affirmative**.

7. POINT No.2:

In the result, I proceed to pass the following:

ORDER

IA-V application U/o 1 R -10(2) of R/w Sec. 151 CPC filed by the applicants is hereby allowed.

Direct the petitioners to arrive proposed respondent as respondent no. 6 and 7 and to carryout the amendment and to file amended petition 2.3.2020.

[Dictated to the stenographer, transcribed by her, revised and corrected by me and then pronounced in the open court this the 18th day of February, 2020]

(SRINATH.K)
PRL.CIVIL JUDGE & JMFC,
K.R.NAGARA.