

**ORDER ON I.A. NO.IV FILED U/O 1 R-10(2) R/W SEC.
151 OF C.P.C.**

The applicants through their counsel presented this application seeking permission of this court to represent the suit and appear before this court in the suit as defendant No.3 to 7. Further to support their application the applicant namely Suresh filed his sown affidavit stating that, the suit has been presented and filed by the plaintiff against the one Jagadeesh for the relief of declaration and also other incidental consequential relief.

2. Further averments of the affidavit discloses that, the suit schedule property is the ancestral and joint family property of the 1st defendant Jagadeesh who is the son of the uncle of the applicant and they are in joint possession and enjoyment over the said property. Further it is as per the applicants, the schedule property has been fallen to the share of one Krishnegowda brother of the Vyramudigowda, the said Krishnegowda has not been made as a party to the suit. Further though the applicants being in possession of the schedule property, the suit has been presented without the applicant who are necessary parties having right and interest in the schedule property. Accordingly, it is according to the applicant they are necessary parties to adjudicate upon the matter effectively. Hence, they are

praying to allow the application and also seeking permission of this court to come on record.

3. However the plaintiff opposed and objected the said application by way of his written objection where in interalia in the written objection filed by the plaintiff he has filed and denied all the averments and statements made in the affidavit by the applicants wherein the written objections the plaintiff submitted that, the application filed by the applicants is not maintainable either in law or on facts. Further it has been averred in the objections that, the plaintiff being the absolute owner of the schedule property, the 1st defendant in collusion with the revenue officials he has transferred the katha into his name. However the 1st defendant is not having any legitimate right, title and interest over the schedule property. Further according to the plaintiff the applicant No.1 Krishnegowda had filed the suit in O.S. No.304/2021 for partition and separate possession and the said suit was dismissed on 08.07.2023. However this application has been presented with ill intention so as to filch and snatch the property of the plaintiff and the applicants are not necessary and proper parties so as to adjudicate the matter effectively to resolve all the dispute between the parties. Hence, the plaintiff seeks to dismiss the application.

4. Heard the counsels appearing for both parties in respect of the application and objection and also bestowed thoughtful attention in respect of the pleadings and documents produced before this court.

5. The following points arise for this court's consideration.

1) Whether applicant has made out sufficient grounds for allowing the present application?

2) What Order?

6. This court findings on the above points for consideration are as under:

Point No.1: In the Affirmative

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

REASONS

7. POINT NO.1:

Upon verifying the pleadings averred in the application and also objections of the plaintiff, this is the very contention of the applicants that, they are entitled for certain portion of share in the schedule property and the said property has been fallen in favour of one Krishnegowda. However the suit has been presented without making and bringing necessary parties to the suit. The applicants are also in joint possession and enjoyment

over the schedule property, accordingly in order to effectuate dispute between the parties they are very necessary to come on record. Wherein the said pleadings averred in the application and affidavit denied in the objections of the plaintiff, where according to the plaintiff, the suit is one for declaration and the defendant No.1 by colluding with the revenue officials created the revenue records into his name and also in order to filch and chouse the right of the plaintiff, they are trying to sell the property. However the applicants are the defendants who are already on record are not having any manner of right, title and interest in respect of the schedule property.

8. Further to prove and substantiate the pleadings of the application, the applicants produce the genealogical tree and other tax paid receipts, death certificates of one Cheluvaraju and certified copy of the order sheet in O.S. No.304/2021. Wherein the suit of the plaintiff Gowramma has been dismissed by this court on placing reliance of the oral submission of the counsel appearing for the plaintiff that, the parties are not appearing before this court. The said suit was instilled by the Gowramma and Suresh claiming to effectuate partition and to allot 1/3rd share. Now the applicants are before this court with similar identical plea that, they are having joint interest and they are in possession of the application schedule property. The

relationship between the applicants along with defendants clearly disclosed in the genealogical tree furnished before this court. As such at this very stage and movement it is not possible to give any findings regarding the title where according to the plaintiff they are disputing the title and ownership of the schedule property.

9. However the defendants or the applicants who are appearing on the application are not having any right over the schedule property. Notably the revenue documents pertaining to the property in dispute are standing in the of defendant and the pleadings of the plaint that, the defendants created the document by the playing fraud and collusion with the revenue officials is a matter of full pledged trial that is to be considered and determined during final adjudication of the matter after leading evidence of either parties to the suit. Since, the applicants are claiming their title to a certain portion, considering application and permitting the applicants to appear before this court and to represent the suit with their pleadings, it will no manner extinguish or obtest the right of the plaintiff in proving the pleadings of plaint and to prove the issues at the trial leading evidence. However no prejudice will be caused upon the plaintiff and there is no impediment upon the plaintiff to substantiate their pleadings with cogent evidence during the trial if the applicants are permitted to represent the suit.

10. However at this very movement considering the pleadings regarding the title is in dispute, though the defendants who are already on record are contested the matter, the grievance of the applicant has to be protected and they should be provided adequate opportunities to protect their pleadings by leading proper reliance and materials. Hence at this movement in the considered view of this court the applicants are to be permitted so as to equalize the pleadings and to determine and to effectuate dispute between the parties completely and imperatively. Eventually as discussed above, the application of the applicants is to be considered liberally. Hence in the opinion of this court the application is liable to be allowed. Hence this court inclined to answer the **point No.1 in the Affirmative.**

11. POINT NO.2:

In view of the above discussions and the reasons mentioned therein this court proceeds to pass the following:-

ORDER

The application No.4 filed by applicant U/o 1 rule 10[2] of C.P.C. is hereby allowed.

The applicants are permitted to come on record as defendant No.3 to 7 as

sought in the application No.4 in order to
adjudicate the suit more effectively.

For amendment and amended plaint.

Call on: 20.10.2024.

(Chandan S)
Prl. Civil Judge & JMFC.,
K.R.Nagar.