

O.S.119/2017

**ORDERS ON I.A. DATED 15.03.2023 UNDER
ORDER I RULE 10 OF C.P.C.**

The applicant/plaintiff No.1 filed the application to implead the opponent as defendant No.18 in this suit, when the case has been posted for further plaintiffs' evidence.

2. The proposed defendant filed statement of objections.

3. Heard.

4. The present suit is filed for the relief of partition and separate possession of the suit schedule properties. The suit was filed in the year 2017. According to the plaintiff No.1, item No.15 of the suit schedule properties belongs to her joint family and khatha of the said property stands in the name of proposed defendant. That the defendant No.1 in his written statement averred that item No.15 property was gifted to the proposed defendant. The said gift deed is not binding on the plaintiff No.1.

The proposed defendant is a necessary party to the suit as in R.T.C. in respect of item No.15 property name of the proposed defendant is forthcoming. Due to oversight the proposed defendant could not be made as a party to the suit.

5. According to the proposed defendant, item No.15 property was purchased in the name of 1st defendant through a registered sale deed dated 30.08.1971 by Sri. Masanashetty father of the proposed defendant. That the 1st defendant when was aged about 10 years was brought to the house of Sri. Masanashetty by the father of the 1st defendant for the education purpose of the 1st defendant as his father was not in a condition to give him education. Sri. Masanashetty was a class-I contractor who obliged and educated the 1st defendant up to S.S.L.C.

That the father of the proposed defendant Masanashetty keeping the services of the 1st defendant in mind purchased 10 acres of land at Thandavadi village of

Gundlupet taluk in the name of 1st defendant. However, the 1st defendant sold the said land to some other persons without the knowledge of Masanashetty. After coming to know of the sale of property, Masanashetty questioned the 1st defendant regarding the sale of property and an issue arose between them. Subsequently the issue was settled and the defendant No.1 executed a registered gift deed in favour of the proposed defendant in respect of item No.15 of suit schedule properties.

6. The proposed defendant on the basis of gift deed got the khatha of the said property mutated in his name. Therefore, the said property is not the joint family property. The proposed defendant has furnished photostat copies of sale deed dated 30.08.1971 and gift deed dated 24.01.2008. As per the sale deed defendant No.1 had purchased the property. As per the gift deed the property is said to be the self-acquired property of Siddashetty which was gifted to the proposed defendant. Though the documents say that the property is the self-acquired

property of the defendant No.1, contention of the plaintiffs is that the said property is the joint family property. The said aspect requires trial. Therefore, when the property is said to be the joint family property and when the burden is upon the plaintiffs to prove the said aspect, it is necessary to bring the proposed defendant on record for proper adjudication of the dispute as the property at present stands in his name. Hence, the following:

ORDER

I.A. dated 15.03.2023 filed by the applicant/plaintiff No.1 under Order I Rule 10 of C.P.C. is allowed with costs of Rs.1,000/-.

Proposed defendant is brought on record as defendant No.18.

For amendment of cause title of the plaint and to furnish the amended plaint, 01.03.2024.

(B.Anupama Lakshmi)
Senior Civil Judge, Nanjangud.
15.02.2024.