

**IN THE COURT OF THE I Addl. CIVIL JUDGE & JMFC
NANJANGUD**

Present:- Sri. Sandeep. A. Naik B.A.,LL.B.,(Spl)
I Addl., Civil Judge & J.M.F.C.,

O.S.No.434/2013

Dated: This the 15th day of JUNE 2017

Plaintiffs: Sri.Chikkamaranaika and another

// Versus //

Defendants: Sri.Nanjundanaika and Others

**COMMON ORDERS ON IA No.2 AND 3 FILED BY
THE PLAINTIFFS**

The plaintiffs have filed I.A No.2 under Order 32 Rule 4 r/w Sec.151 of C.P.C., to bring the LRS of deceased defendant No.1.

2. The plaintiffs have filed I.A. No.3 under Order 32 Rule 4 r/w Sec.151 of C.P.C., to appoint guardian to represent the wife of deceased 1st defendant who is said to be unsound mind.

3. This is a suit filed by the plaintiff for the relief of partition and separate possession in respect of the suit schedule property. The defendant No.1 is stated to be the father of plaintiff No.1 and 2 and husband of their mother by name Mahadevamma. It is averred in the affidavit that the defendant No.1 died on 26.11.2013 and the mother of the plaintiff being the

sole legal representative of the deceased defendant No.1 has to be brought on record. The plaintiffs have sworn to the affidavit and stated that the plaintiff No.1 and 2 are the son and daughter of defendant No.1 by name Nanjundanayaka S/o Chaikkamadanayaka. The said Nanjundanayaka died leaving behind the present plaintiffs and their mother Mahadevamma. Therefore, they have filed I.A. No.2 to bring her as the LR of deceased defendant No.1. It is further averred that except the plaintiffs and the said Mahadevamma there are no other legal representatives of the deceased defendant No.1.

4. As the son and daughter i.e. plaintiffs were already on record and their mother Mahadevamma was not a party to the present suit. Therefore, she being the LR of deceased defendant No.1 has to be brought on record. It is further sworn to the affidavit that their mother is suffering from unsound mindness since from last 20 years and thus she being incapable of either receiving summons or to contest the matter. Therefore, they have also filed another application for appointment of guardian to represent her. The proposed defendant is the only remaining LR who is not a party to the present suit. Therefore, in order to continue with the matter and to adjudicate the matter effectively she is a necessary party. Therefore, they have filed these applications. Further if the applications are allowed, no loss or hardship would be caused to the other side, on the other hand if the application is not allowed, the plaintiffs would be put to heavy and irreparable loss which cannot be compensated in terms of money. On urging all these grounds the plaintiffs have prayed for allowing the applications.

5. The defendants have not filed objection to the present application in spite of giving sufficient opportunities to them.

6. Heard Sri.GKR, advocate for plaintiffs.

7. The points that would arise for my consideration are as under :

1. Whether the applications filed by the plaintiff under Order 32 rule 4 r/w Sec.151 of C.P.C., are deserves to be allowed?

2. What order?

8. My answers to the above points is as under

POINT No.1 : In the Affirmative

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

REASONS

9. **POINT No.1** : The plaintiffs have filed this suit seeking the relief of partition and separate possession in respect of the suit schedule properties. The defendant No.1 is stated to be the father of the plaintiffs and he is reported to be dead. The plaintiffs claims to be the daughter and son of deceased defendant No.1 and further they contend that the proposed defendant i.e. Mahadevamma is their mother and wife of said deceased defendant No.1. They have filed the applications to bring the proposed defendant as a LR of the deceased defendant No.1. It is pertinent to note here that this court has issued

notice of the I.As to the proposed defendant. On perusal of the order sheet it reveals that said proposed defendant i.e. Smt.Mahadevamma was ordered to be produced before this Hon'ble' Court on 21.01.2016. The said Smt. Mahadevamma was produced before Hon'ble' Court on 15.06.2016 and on enquiry the court has come to the opinion that she was suffering from mental unsoundness. Further the counsel for plaintiff has produced ample documents in order to show that the said Mahadevamma is suffering from unsoundness and also taking treatment in the JSS Hospital, Mysuru. On perusal of these documents it can be said that the proposed defendant Mahadevamma is suffering from unsoundness. Therefore, in view of the Order 32 Rule 15 the guardian has to be appointed to the persons who suffers from any mental infirmity of protecting their interest when sued or being sued. Therefore, I am of the opinion that the plaintiffs have made out sufficient grounds to implead the proposed defendant as defendant to the present suit and she being the necessary party to the present suit. Further the plaintiffs have also made out sufficient grounds in order to show the proposed defendant is suffering from mental infirmity. Therefore, a court guardian has to be appointed in order to protect her interest. Therefore, I am of the view that the plaintiffs have made out sufficient grounds to allow I.A No.2 and 3. Hence, I answer Point No.1 in the Affirmative.

10. **POINT No.2** : On basis of the findings given on point No.1, I proceed to pass the following:

:: ORDER ::

The IA No. 2 filed by plaintiff under Order 32 Rule 4 r/w Sec.151 of C.P.C., to bring the LR of deceased defendant No.1 on record is hereby allowed.

The proposed Lr's of deceased defendant No.1 is permitted to come on record.

The I.A. No.3 filed by the plaintiff under Order 32 Rule 4 r/w Sec.151 of C.P.C., to appoint a court guardian to the proposed defendant who is suffering from mental infirmity is hereby allowed.

Call on for appointment of court guardian to proposed defendant No.1(a).

(Dictated to the stenographer directly on the computer, computerized by him, corrected by me, signed and then pronounced in the open court on this the 15.06.2017)

**I Addl. Civil Judge & JMFC
Nanjangud**