

ORDER ON I.A.No.III/2014

1) The proposed Defendants have filed an application under Order I Rule 10 R/w. Section 151 of CPC to implead themselves as Defendants.

2) In the affidavit to the accompanying application, these proposed Defendants have submitted that first proposed Defendant is the second wife of deceased Defendant No.1 and that the second proposed Defendant is their daughter.

3) It is submitted that her husband Defendant No.1 died during the pendency of the suit and the Advocate for Plaintiff in order to bring deceased legal heirs had taken steps. Incidentally the name of first proposed Defendant and the first wife of her deceased husband are one and the same. And hence, the notice that was sent to first wife Smt.Mahadevamma, it came to be served on me. That is how she learnt about the filing of this suit by the children of first wife.

4) It is further submitted that she and her daughter are also the legal heirs of the deceased Defendant No.1 and hence has filed this present application. She has stated that if the accompanying application is not allowed, irreparable hardship will be caused to them and hence prays to allow the application.

5) Per contra, the Advocate for Plaintiff has filed their objections contending that second wife has no status at par with first wife and her right is not recognised under Hindu Law and that she

does not have any right over the property of Defendant No.1. Further, the second proposed Defendant being the illegitimate daughter, even she does not have any right and further objecting by saying that they are not necessary parties, prayed to dismiss the application.

6) Heard both sides, the following points arise for consideration.

Point No.1: Whether the proposed defendants have made out grounds to implead them as necessary parties to the suit ?

Point No.2: What order ?

7) This Court answers the above point as follows:

Point No.1: In Partly affirmative.

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

REASONS

8) Point No.1: This is a suit for partition. The first proposed defendant in her application has submitted that she is the second wife of deceased Defendant No.1 and that second proposed Defendant is her daughter born to Defendant No.1. In Hindu Law as rightly objected by Advocate for Plaintiff, the second wife has no right to claim right over her husband's property. It is only the children, though being illegitimate, who can claim over father's property. This fact has been elicited in *Revanasiddappa and Anr. V/s. Mallikarjun and ors.* as decided by Hon'ble Supreme Court. Hence, in a suit for partition, the

second proposed defendant to this application being a legal heir of 1st Defendant is having share in the property of her father. She is necessary party to decide the suit for partition. The second wife being the first proposed Defendant is having no share and is not necessary party for adjudication of suit. Hence, for the above reasons, this Court answers the Point No.1 in partly affirmative.

9) Point No.2: For the foregoing reasons and holding Point No.1 in partly affirmative, this Court proceeds to pass the following:

ORDER

The application filed by the proposed Defendants are hereby allowed in part. The second proposed Defendant ie., N. Krishnaveni is hereby permitted to implead as Defendant No.11.

I Addl. Civil Judge & JMFC.,
Nanjanagud