

KAMS600004952020



O.S./42/2020

**IN THE COURT OF THE SENIOR CIVIL JUDGE AT
PERIYAPATNA**

Present
Sri.A.SAMIULLA
B.Sc., LL.B.,
Senior Civil Judge
Periyapatna.

Dated: 4th Day of July 2022

OS.No.42 of 2020

PLAINTIFF: Smt.P.Papamma.

V/s

DEFENDANTS: Smt.Vasanthi & Ors.

IA.No.6

Applicants/Prop.defts: **1.** Smt.Ashwini,
(4 & 5) Aged 27 years,
2. Smt.Dhanalakshmi,
Aged 25 years,
Both are d/o
Late Paramashiva,
R/o Sunkadahalli,
Haranahalli Hobli,
Piriyapatna Taluk.

V/s

Opponent/Plaintiff: Smt.Papamma

ORDER ON IA-6; u/O 1 RULE 10 (2) R/w Sec.151 OF CPC;

Applicants moved this application seeking permission for self impleadment as defendants-4 & 5 in the suit.

2. Plaintiff has not objected the application. Defendants resisted the application by filing statement of objection.

3. Heard arguments.

4. Following point arises for consideration.

Whether proposed defendants-4 & 5 are necessary or proper parties to the suit and their presence is warranted for the complete adjudication of real controversy between the parties to lis?

5. Answer to the above point is in ***affirmative*** for the following;

REASONS

6. At the outset; suit is filed for partition and separate possession of plaintiff's 1/4th share in the suit property by asserting that; propositus Paramashiva and his two wives died leaving behind plaintiff & defendants (children

of first wife Eshwari) and second wife Jayalakshmi died leaving behind Ashwini & Dhanalakshmi (proposed D4 & 5) by contending that; suit property was purchased by first wife Eshwari out of her own funds under a registered sale deed dated: 20.05.1985 & she died intestate, as such plaintiff & defendants are having $1/4^{\text{th}}$ share each and as per the provisions of Section 15 & 16 of Hindu Succession Act. No division is effected by metes and bounds. Defendant-2 herein filed a suit for partition in OS.No.46/18 in respect of present suit land on the file of Civil Judge, Periyapatna against plaintiff, defendants-1 & 3 herein and also daughters of deceased Jayalakshmi; subsequently, defendant-2 withdrawn the suit. Defendant-3 has illegally got transferred Katha of suit land in his name. In spite of demands defendants refused to allot her legitimate share. Hence, suit is filed.

7. Defendants have not filed written statement. When the matter is set down for plaintiff's evidence; applicants

filed the application at hand for the relief stated supra by asserting that; they are sisters of plaintiff & defendants herein and their father Paramashiva died about three years back and suit property is joint family property and they are having share in it, hence, they prayed to allow the application.

8. Plaintiff has not objected the application. Defendants-1 to 3 objected the application by contending that; applicants are not the successors of deceased Paramashiva & they have no right over the suit property, as such their application is liable to be rejected.

9. It is worth to note that; a necessary party is one in whose absence the Court cannot pass an effective decree at all. Proper party is one, whose presence before Court is necessary to ensure that all matters in dispute are effectively or completely determined. The only reason which makes it necessary to make a person a party to

action is that he should be bound by the ensuing result and the question should be settled in the suit.

10. It is worth to note that; in plaint it is pleaded that suit property was purchased by the mother (Eshwari) of plaintiff & defendants under a registered sale deed dated 20.05.1985; she died intestate, as such they being her children succeeded the same under the provisions of Section 15 & 16 of the Hindu Succession Act, 1956. Along with plaint; plaintiff produced certified copy of sale deed dated 26.05.1985 (in plaint date is shown as 20.05.85), wherein it is indicated that; Eshwari purchased property (suit land) from Vishveshwariah. Plaintiff also produced certified copy of partition deed dated 28.09.2017 effected between Paramashiva (father of plaintiff) and his son Sheshappa (D3), wherein it is stated that; land bearing Sy.No.26/2 is an ancestral property and division is effected between father & son (Paramashiva & Sheshappa) in which Paramashiva took

an amount of Rs.1,00,000/- and the land in Sy.No.26/2 measuring 3As 24Gs (suit land) allotted towards the share of Sheshappa (D3 herein).

11. As per plaint para-6; defendant-2 filed suit OS.No.46/18 in respect of suit property by arraying the present applicants as defendants. In registered partition deed dated 28.10.17 the defendant-3 herein stated that suit land is an ancestral property. In addition to this in the case at hand there is no dispute that the present applicants are daughters of Paramashiva through his second wife. None of the parties disclosed whether Paramashiva taken second marriage during subsistence of first marriage or after the death of first wife he contracted second marriage.

12. The claim of plaintiff that the suit land is separate property of her mother; filing of suit by defendant-2 by arraying the applicants as party to suit; the statement of defendant-3 and deceased Paramashiva in the registered

partition deed that the suit land is an ancestral property; and the claim of applicants that the suit land is joint family property; all these facts made the present applicants as necessary as well as proper parties to suit because their presence is warranted to adjudicate the real controversy revolving around the nature of suit land, which will decide who is having what right over the suit land. In this backdrop if the prayer of applicants is denied they will be subjected to hardship because it will curtail their right to put forth their claim in respect of immovable property in question and in that event it amounts to violation of principles of natural justice.

13. It is well settled that; plaintiff being dominus litis, may choose persons against whom he wishes to litigate. He cannot be compelled to sue a person against whom he does not seek any relief. Thus, a person who is not a party, has no right to be impleaded against the wishes of plaintiff. Exception to general rule is that a proper and

necessary party may be added by the Court subject to the provisions of Order 1 Rule 10(2) CPC. Here, applicants are proper & necessary parties because their legal right if any will be affected if they are not added as parties. That apart, their presence is also required to avoid the multiplicity of proceedings. On the other hand no prejudice will be caused to the other side if the application is allowed. Hence, above point is answered in affirmative and proceeds to pass the following;

ORDER

IA.No.6; under Order 1 Rule 10(2) r/w Section 151 CPC filed by the applicants/proposed defendants-4 & 5 is allowed.

Applicants are arrayed as defendants-4 & 5 in the suit.

Plaintiff to carry out amendment and to supply amended plaint.

No order as costs.

(Dictated to the Stenographer and directly typed by her, corrected and initialed by me and then pronounced in the open Court on 4th day of July 2022).

Sd/-

Senior Civil Judge
Periyapatna.