

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND JMFC,
PERIYAPATNA**

Dated: this 12th day of June, 2018

Present

Sri Arjun S.Mallur, B.A.L, LL.B.,
Senior Civil Judge and JMFC

OS.No.10/2016

PLAINTIFF : T.Vasantharaje Urs

V/s

DEFENDANTS : T.Gopalaraje Urs & others

IA.No.VIII

APPLICANT : Mahendraraje Urs

V/s

**OPPONENTS/
APPLICANTS
NOS.1 TO 5** : T.Gopalaraje Urs & others

(By Sri J.S.Nagaraja, Adv.,)

&

IA.No.IX

**APPLICANTS
NOS.6 & 7** : Smt. Kamalajamani & another

(By Sri B.G.Sathish, Adv.,)

COMMON ORDERS ON IA.Nos.VIII & IX

I.A.Nos.VIII & IX are filed by the applicants under Order 1 Rule 10(2) R/W Sec.151 of CPC seeking to implead themselves as defendants No.7 to 12 to the suit. It is contended by the applicants under I.A.No.IX that they are the daughters of late. Devaraje Urs. It is submitted that late. Devaraje Urs died

leaving behind the plaintiff, the defendants No.3 to 5 and the applicants as his surviving legal heirs and that the plaintiff conveniently to avoid any share being given to the applicants in the ancestral properties have not impleaded them as parties to the suit and that the applicants also have right of share in the suit schedule properties and therefore they are necessary parties to the suit. The applicants under I.A.No.VIII contend that they are the children of Jayalakshammammani who is the second daughter of late. Devaraje Urs. It is submitted said Jayalakshammammani died leaving behind the applicants as her surviving legal heirs. It is submitted that as the plaintiff contends that the suit schedule properties are ancestral properties of deceased Devaraje Urs the applicants being his grand-children are also entitled for share and therefore they are necessary parties to the suit. The applicants in both the applications further contend that late. Devaraje Urs also had one more daughter by name Muddulakshammammani who has died leaving behind her only son B.Raje Urs who is also a necessary party to the suit and needs to be impleaded. Hence the applications.

2. Common statement of objections have been filed by the plaintiff wherein it is contended that the applicants are not the children and grand-children of late. Devaraje Urs and that except the plaintiff and defendants No.1 & 2, late. Devaraje Urs had no other children. It is submitted that the applicants are not necessary parties to the suit they have no right or interest whatsoever in the suit schedule properties and that the applications are filed at the instigation of defendants No.3 to 5 and sought for rejecting the applications.

3. Heard learned counsels appearing for both sides and perused the entire material on record.

4. The points which arise for my consideration are as under-

- 1) Whether the applicants under I.A.Nos.VIII & IX are necessary parties to the suit?
- 2) What Order?

5. My answer on the above points is as under-

Point No.1 : “**AFFIRMATIVE**”

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

REASONS

6. **Point No.1:** The applicants under I.A.Nos.VIII & IX contend that they are the grand-children and children of late. Devaraje Urs also having right of share in the suit schedule properties and therefore they are necessary parties to the suit. Per contra it is the contention of the plaintiff that except himself and defendants No.1 & 2, late. Devaraje Urs had no other children and therefore the applicants are not necessary parties to the suit. The plaintiff has filed this suit for partition and separate possession his share in the suit schedule properties. The plaintiff contends that all the suit schedule properties are ancestral joint family properties of late. Devaraje Urs. In a suit for partition in the ancestral properties all the members of the ancestral family are necessary parties. The plaintiff specifically contends that no prior partition has taken place in the ancestral properties till date. The applicants in I.A.No.IX contend that they are the daughters of late. Devaraje Urs. The applicants in I.A.No.VIII contend that they are the children of deceased Jayalakshammammi who was also one of the daughter of late. Devaraje Urs. Whether the applicants are the children and grand-children of late. Devaraje Urs is a matter to be decided in the course of trial. The applicants further contend that late. Dervaraje Urs had one more daughter by name Muddulakshammammi who has died leaving behind her only son B.Raje Urs. In the plaint the plaintiff describes himself and defendants No.1 & 2 as the only children of late. Devaraje Urs it appears prima facie that the plaintiff has left out daughters of late. Devaraje Urs. As already mentioned above whether the applicants and B.Raje Urs are the surviving legal heirs of late. Devaraje Urs or not is a matter to be decided in the course of trial. The plaintiff has just commenced his evidence and is yet to be examined in full. In a suit for partition all the sharers become necessary parties to the suit. Without the

presence of those parties a suit for partition cannot be comprehensively adjudicated. Therefore under these circumstances and keeping in mind the nature of relief claimed in the suit it would be just and proper to implead the applicants as parties to the suit. Accordingly I answer **Point No.1** in the "**AFFIRMATIVE**".

7. **Point No.2:** For the aforesaid reasons I pass the following-

ORDER

IA.Nos.VIII & IX filed by the applicants under Order 1 Rule 10(2) R/W Sec.151 of CPC are hereby **ALLOWED**.

The applicants under I.A.No.IX and applicants under I.A.No.VIII are permitted to come on record as defendants No.6 to 12. The plaintiff is directed to implead the applicants as defendants accordingly and shall amend the plaint and also file amended plaint to that effect. The plaintiff is also directed to implead all or any of the necessary party who have been left out.

No order as to costs.

(Dictated to the stenographer directly on computer, same is corrected and then pronounced by me in the open court on this 12th day of June 2018)

(Arjun S.Mallur)
Senior Civil Judge and JMFC.,
Periyapatna.

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