

KAMS600002122020



O.S./8/2020

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

**Present**

**Sri.A.SAMIULLA**

**B.Sc., LL.B.,**

**Senior Civil Judge,**

**Periyapatna.**

**Dated: 5<sup>th</sup> Day of April 2023**

**OS.No.8 of 2020**

Sri.H.T.Nagaraju & Ors.

**.....Plaintiffs**

**V/s**

Sri.Thimmegowda & Anr.

**.....Defendants**

**IA.No.7**

Sri.H.T.Nagaraju & Ors.

**....Applicants/plaintiffs**

**V/s**

**3. Smt.Saraswathi w/o Late Govinda**

**Aged 40 years,**

**4. Punithkumar s/o Late Govinda**

**Aged 22 years,**

- 5.** Appu s/o Late Govinda  
Aged 20 years,  
**3 to 5** are r/at Haradur village,  
Bettadapura Hobli, Periyapatna Taluk.
- 6.** Smt.Pushpalatha d/o Late Govinda  
w/o Sunil, Aged 25 years,  
r/o Katnaluvillage, Hebbalu Hobli,  
K.R.Nagar Taluk.

**....Opponents/Proposed D3 to 6**

**:Order on IA-7; u/O 1 Rule 10 (2) r/w Section  
151 of CPC:**

Plaintiffs moved this application seeking permission to implead the opponents as defendants-3 to 6 in the suit.

- 2.** Proposed defendants resisted the application by filing statement of objections.
- 3.** Heard arguments from both side.
- 4.** Following point arises for consideration.  
*Whether the opponents/proposed defendants-3 to 6 are necessary and proper parties & their presence is warranted for the complete and effective 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 plaintiffs 1/4<sup>th</sup> share each in the suit properties by asserting that; they are children of defendant-1, whose name is mutated in the revenue records of suit lands on the basis of inheritance after the death of his parents Karigowda and Thimmamma. Suit items-1 & 2 are ancestral and joint family properties, as they were in the name of Karigowda. On the strength of revenue records the defendant-1 is trying to alienate suit properties in favour of defendant-2. They demanded him to effect partition but to no avail. Hence, suit is filed.

7. Defendants filed written statement denying plaint averments in toto and inter alia contended that; the plaintiffs-2 & 3 are not the children of defendant-1, who is having two wives namely Lakshamma, who is

mother of plaintiff-1; and second wife Shivamma, who is mother of Govinda and Jayalakshmi (defendant-2). Said Govinda died about 15 years back leaving behind wife Saraswathi and children Punithkumar, Appu and Pushpalatha, who are necessary parties to suit. They contended that a registered partition deed dated 06.09.1989 was effected in the family, wherein land bearing Sy.No.37/4 (4As) of Bettadapura village and 1/3<sup>rd</sup> portion of house situated at Haraduru village were allotted towards the share of plaintiff-1 and his mother Lakshamma.

Land bearing Sy.No.35/2 (4As 27Gs) of Bettadapura village and 1/3<sup>rd</sup> portion of house situated at Haraduru village were allotted towards the share of second wife Shivamma and her son Govinda.

Land bearing Sy.No.35/2 (4As 27Gs) of

Bettadapura village and 1/3<sup>rd</sup> portion of house situated at Haraduru village were allotted towards the share of defendant-1 & his mother Thimmamma. Defendant-1 has gifted said property in favour of defendant-2 under registered gift deed dated 05.09.2018. Hence, they prayed to dismiss the suit.

**8.** After completion of pleadings and settlement of issues matter was set down for trial. When the case is posted for cross-examination of Pw.1 the plaintiffs filed the application at hand for the relief stated *supra* by stating that; Govinda the brother of defendant-2 is no more and the opponents are his legal heirs and they are necessary parties to suit, as they are members of undivided joint family. Hence, they prayed to allow the application.

**9.** Opponents objected the application by filing

statement of objections by contending that; joint status was severed under registered partition deed dated 06.09.1989, wherein land bearing Sy.No.37/4 (4As) of Bettadapura village and 1/3<sup>rd</sup> portion of house situated at Haraduru village were allotted towards the share of plaintiff-1 and his mother Lakshamma. Land bearing Sy.No.35/2 (4As 27Gs) of Bettadapura village and 1/3<sup>rd</sup> portion of house situated at Haraduru village were allotted towards the share of second wife Shivamma and her son Govinda. Land bearing Sy.No.35/2 (4As 27Gs) of Bettadapura village and 1/3<sup>rd</sup> portion of house situated at Haraduru village were allotted towards the share of defendant-1 and his mother Thimmamma. Thereafter, defendant-1 has executed a registered settlement deed dated 19.10.19 in favour of wife Shivamma and proposed defendants-4 & 5. Plaintiffs have no right over the land in

Sy.No.35/2 measuring 4As 27Gs. Hence, they prayed to reject the application.

**10.** 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 the Court is necessary to ensure that all matters in dispute are effectually or completely determined. The only reason which makes it necessary to make a person party to action is that he should be bound by the ensuing result and the question should be settled in the suit. In the light of settled principles let us analyze the factual situation at hand.

**11.** It is pertinent to note that; here, suit is filed for partition and separate possession in respect of lands bearing Sy.No.37/2 (4As), Sy.No.35/2 (9As 14Gs) and house. Defendants as well as proposed defendants

contended that joint status is severed under registered partition deed dated 06.09.89, wherein land bearing Sy.No.35/2 measuring 4As 27Gs each is allotted towards the share of defendant-1 and his mother Thimamma and second wife Shivamma and her son Govinda respectively. They contended that since there is division in the family; they are not necessary parties to suit.

**12.** It is worth to note that; as stated above the entire extent of land in Sy.No.35/2 is the subject matter of suit herein, which includes the land that the proposed defendants claiming to be allotted to them under a partition. Since the land which the proposed defendants are claiming exclusively is also involved in the suit their presence is necessary for complete and effective adjudication of lis. To avoid multiplicity of proceedings also their presence is necessary. If any

adverse finding is recorded in their absence then they will be subjected to hardship. In this backdrop it can be said that the opponents are necessary parties and their presence is absolutely necessary for complete and effective adjudication of lis. Thus, in the light of discussion *supra* above point is answered in affirmative & proceeds to pass the following;

**ORDER**

IA.No.7; u/O 1 Rule 10 (2) r/w Section 151 of CPC filed by the plaintiffs is allowed.

Opponents are arrayed as defendants-3 to 6.

No order as to costs.

(Dictated to the Stenographer on laptop, directly typed by her, corrected and initialed by me and then pronounced in the open Court on 05.04.23).

sd/-  
**(A.Samiulla)**  
**Senior Civil Judge,**  
**Periyapatna.**