

ORDERS ON IA-XI

The proposed defendant No-8 / applicant has filed this application U/o 1 Rule 10(2) R/w Sec. 151 of CPC seeking permission to implead him as defendant No-8 in this suit, because the defendant No.1 willed away the portion of the Item No.2 of suit schedule property.

2. In support of the application, the proposed defendant No-8 / applicant by name Vikram Gadhale has sworn to his affidavit stating that he is son of defendant No.2. The defendant No.1 being her grand mother during her life time gifted portion of suit schedule item no.2 of property in favour of defendant no.3 & 4 and remaining portion bequeathed in is favour under a registered will dated 19-10-2013 and he has become the owner in possession of the said bequeathed property therefore he is necessary party to decide this suit. Hence he prayed to allow the application.

3. To oppose the IA, the plaintiff has filed his objection contending that application is not maintainable either in law or on facts. Without obtaining Probate the applicant cannot step into the shoes of defendant no.1 as such the application is not maintainable. Hence he prayed to reject the application.

4. Heard both sides, perused the material available on record.

5. Now, the points that would arise for the consideration of this court are as follows:-

- 1) Whether the proposed defendant No-8 / applicant is proper and necessary party to decide the matter?

2) What order?

6. My findings to the above points are as under:

Point No-1: In the affirmative

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

REASONS

7. **Point No-1:** The learned advocate for applicant / proposed defendants No-8 contended that grand mother of the applicant is the absolute owner of suit schedule item No.2 property as such during her life time she has gifted portion of it in favour of defendant No.3 & 4 under registered gift deed and put them in its possession. So also she has willed away the remaining portion in favour of the applicant by executing the registered will deed on 19-10-2013, the copy of which is produced in this suit. When the defendant No. 1 has died automatically the present applicant has become the absolute owner in possession of said portion of the property. Therefore when this suit is pending with regard to said property then the present applicant is proper and necessary party to this suit and without impleading him has a party no effective adjudication will be made. Hence he prayed to allow the application.

8. Per contra, the advocate for the plaintiff contended that the present suit is for partition and separate possession with regard to joint family properties of the plaintiff and defendants No-1 to 4. The present applicant is no way concerned to the suit property. Further he contended that the alleged will deed is not a deed of transfer of title and it cannot be looked into at this stage. The proposed defendant cannot step into the shoes of defendant No.1 without obtaining the Probate. Though the alleged will deed has been

executed in the year 2013 but it has not produced earlier therefore the application is fit to be rejected, the proposed defendant in colluding with other defendants only with a view to protract this case has filed this untenable application. Therefore he prayed to he prayed to reject the application.

9. Having heard the arguments, admittedly, this suit is one for partition and separate possession filed by the plaintiff against the defendants in respect of the suit schedule properties. Admittedly the mother of plaintiff has died during pendency of this suit accordingly the plaintiff has brought her LRs on record. Thereafter the present application came to be filed by the son of defendant No.2 stating that he is the legatee under the will executed by defendant No.1 with regard to suit item No.2 property. At the time of filing this application the applicant has not filed the copy of said will deed but at the time of submitting his arguments the counsel for proposed defendant No.8 has produced the certified copy of the will deed said to have been executed by defendant No.1 in favour of the applicant.

10. Looking to the certified copy of the will deed it has been executed on 19-10-2013 and this the present suit was filed on 18-12-2013 it means prior to filing of the suit the will deed is said to have been executed by the defendant No.1 but which has not been disclosed by the defendant No.1 & 2 in their written statement. It is needless to say that any property bequeathed under the Will shall devolve upon the Legatee only on the death of Testator. Therefore here the applicant who is said to be the legatee under the said Will has filed this application seeking impleadment of him in this case as he is proper and necessary party. There is no necessary for the

applicant to produce the probate as contended by the plaintiff. Always the will is a disputed document, here though the applicant is permitted to implead as defendant in this case it is his bounden duty to plead and prove the will as contended by him. Under such circumstances the applicant has made out sufficient grounds to show that he is not only proper party but also necessary party in the present suit. Therefore, I am of the considered opinion that the applicant has made out grounds to implead him as defendant No.8 in this suit. Hence I answer Point No-1 in the affirmative.

11. Point No-2: For the foregoing reasons, I proceed to pass the following:

ORDER

I.A. No-XI filed U/o 1 Rule 10(2) R/w Sec. 151 of CPC is hereby allowed.

The plaintiff is directed to amend the plaint and furnish amended plaint on or before 01-01-2018.

**Addl. Senior Civil Judge
Raichur.**