

ORDER ON IA NO.XX

Provision under which the application is filed	U/o.1 rule 10(2) and (4), R/w.Sec.151 of C.P.C.
Relief sought for	To implead the misjoinder as defendant no.1, 3, 8, 9 and 22.
The date on which the application is filed	26.09.2024
Number of the application	IA No.XX
The date on which the objections are filed by different opponent	15.10.2024
The date on which the orders were passed on the said application	18.12.2024

The plaintiff filed this application U/o.1 rule 10(2) and (4) R/w.Sec.151 of CPC to implead the misjoinder as defendant no.1, 3, 8, 9 and 22.

2. In the affidavit contended that, the applicant and defendant no.1 to 10 constituted undivided joint family and suit schedule properties are the ancestral properties of the plaintiff and defendant no.1 to 10. The plaintiff and defendant no.1 to 10 are the legal heirs of late Rangappa Diwan and Bhagirathi. The defendant no.1 and 6 to 8 are the daughters of deceased Rangappa Diwan. The

defendant no.2 and 10 are the sons of Rangappa Diwan and defendant no.3 to 5 are the daughters of deceased Vijayalaxmi. The said Vijayalaxmi is the own second daughter of deceased Rangappa Diwan. Further contended that the defendant no.1, 3, 8 and 9 were not ready to take the summons. For that the plaintiff requested the said defendants. At that time they insisted to the plaintiff to delete the name of the defendants from the suit proceedings. Hence the plaintiff gave instruction to her counsel and her counsel filed memo for not pressing the suit against defendant no.1, 3, 8 and 9 on 30.06.2022 and the same was accepted and suit was dismissed as not pressed against the defendant no.1, 3, 8 and 9. Now the plaintiff contended that they are the necessary parties for proper adjudication of the case and it is necessary to implead them in the suit. Further contended that the defendant no.22 is to be impleaded in this case as she is necessary party. The proposed defendant no.22 is the wife of Ranganath S/o. Basavaraj uruf Basanna who is son of Vijayalaxmi. The said Vijayalaxmi is the second sister of the plaintiff. Hence she is necessary party. Hence with these set of contention prays to allow the application.

3. On the other hand, the defendants filed objection. In the objection contended that application is not maintainable. Already evidence

was began now the case is posted for cross of PW.1 by other defendants, at this stage application is not maintainable. Moreover the plaintiff herself filed memo to not press the suit against the defendant no.1, 3, 8 and 9 on 30.06.2022 and same was allowed and suit against them was dismissed as not pressed. Now filed this application again to implead the deleted the defendants along with defendant no.22 as she is necessary party. There is no sufficient grounds in the application. Hence prays to reject the application.

4. Heard both side.

5. The following points arises for my consideration;

1. Whether plaintiff has made out sufficient grounds to allow the application ?

2. What order ?

6. My answered to the aforesaid points are as under;

Point No.1 : In the partly affirmative

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

R E A S O N S

7. **POINT NO.1:** The plaintiff filed this suit against the defendants for the relief of partition in respect of suit schedule property. The plaintiff filed this suit against the defendant no.1 to 20 and

subsequently defendant no.21 was impleaded. As per the records the defendant no.1, 3, 8 and 9 were deleted on the strength of the not pressed memo filed by the plaintiff.

8. In the affidavit plaintiff contended that the defendant no.1, 3, 8 and 9 were not ready to receive the summons. For that the plaintiff requested them and for that they insisted the plaintiff to delete their names from the suit land. Hence as per instruction of the plaintiff his counsel got dismissed the suit against the defendant no.1, 3, 8 and 9 by filing not press memo on 30.06.2022. Now contended that they are the necessary parties for proper adjudication and also contended that proposed defendant no.22 is necessary parties to this suit.

9. The reason mentioned in the affidavit shows that through her counsel plaintiff is conducting the case. The reasons mentioned in the affidavit cannot be accepted and it is against the procedures of the code of Civil Procedure. This being a suit for partition, before filing the memo the counsel should advice the plaintiff about the consequences of filing the not press memo against the defendant no.1, 3, 8 and 9. Now plaintiff filed this application to implead them as they are the necessary parties. If the application is rejected then there is no end of lis in respect of

suit properties. The proposed defendant no.22 the wife of Ranganna who is the son of deceased Vijayalaxmi but in the genealogy the Ranganath was not shown as son of Vijayalaxmi. Further contended that Vijayalaxmi is the sister of the plaintiff. As per the same the Vijayalaxmi had a son by name Ranganath S/o. Basavaraj uruf Basanna but he is not the party to the suit. Hence under such circumstances the applicant has failed to show that the proposed defendant no.22 is necessary party to this suit.

10. As per the record this being a suit for partition the all the sharers must be party to the suit. Considering the same it is necessary to allow the application by imposing heavy cost on the plaintiff as she has committed error. Hence in the interest of justice it is necessary to allow the application in part to implead the deleted defendant no.1, 3, 8 and 9 in the suit. Hence this court answered the Point No.1 in the “partly affirmative”.

11. **POINT NO.2:** For the reasons stated in the Point No.1, this court proceed to pass the following;

ORDER

I.A.No.XX filed U/o.1 rule 10(2) and (4) R/w. Sec.151 of CPC is hereby partly allowed on cost of Rs.3000/-.

Cost is to be paid to the TLSC,
Devadurga.

Subject to payment of cost plaintiff
is directed to amend plaint and furnish the
amended plaint copy.

Call on 07.01.2025.

**Senior Civil Judge & JMFC.,
Devadurga.**