

**IN THE COURT OF THE ADDL., CIVIL JUDGE,
AT LINGSUGUR.**

PRESENT

Sri. Deshmukh Shivakumar,
B.A.L. L.L.M,

Addl. Civil Judge & JMFC Lingasugur.

Dated 18th day of July 2022

ORIGINAL SUIT NO.238/2011

PLAINTIFFS:- Raju S/o Late Shamsundara,
Age: 28 years, Occ: Agri.,
R/o Mudgal (Venkatarayanpet),
Tq: Lingasugur, Dist: Raichur. & others

(By Sri. K.C.S., Advocate)

// Versus //

DEFENDANTS:-

1. Shekharappa S/o Krishtappa Dasar,
Age: 28 years, Occ: Agri.,
R/o Mudgal (Venkatarayanpet),
Tq: Lingasugur, Dist: Raichur. & others

(D1 and 2 by Sri.SCP advocate)

(D3 by Sri.VPSJ advocate)

(D4 and 5 by Sri.DHM advocate)

ORDERS ON IA No.XIV UNDER ORDER I RULE 10(2) OF
CPC

The plaintiff has files the present suit for the relief of declaration and injunction. Now he files IA No.XIV U.O 1 rule 10(2) of CPC fro impleading proposed defendant No.7 by name Padmawathi D/o Ramanna Dasar.

2. Annexing to his affidavit he submits in WS of defendant No.3 he disclosed padmawathi is wife of deceased Shamsundar. But not mentioned proper address to implead her as necessary parties. At this stage the DW2 Ramanna has disclosed Padmawathi is his daughter and residing at Sindhanur therefore to avoid future complication he wants to implead Padmawathi in the suit. To determine the real question in controversy the Padmawathi is necessary for effectual disposal of the suit. Therefore he prays to allow the said application in the interest of justice and equity.

3. On the other hand counsel Sri.VPSJ files detail objections and stating the suit was filed in the year 2011. The written statement defendant No.3 was filed in the year 2013. the fact regarding alive of Padmawathi is within the knowledge plaintiff since 2012. The defendant No.6 was added in the year 2016 and he filed his written statement in the year 2019. But the said facts are within the personal knowledge of the said petitioner then also not incorporated the said party at the earliest.

4. The plaintiff has moved an application U/O XXIII rule 1 for withdrawal of the suit and in the said affidavit he deposed regarding whereabouts are not known son and wife of Late. Shamsundar. The DW2 is his evidence the proposed party is residing with him and the address shown in the cause title in the present application is wrong. Therefore the present application is against to the pleadings evidence of DW2 therefore he prays to dismiss the application with heavy cost.

5. Heard both the sides.

6. After perusal of the facts averred in the affidavit, the points that arise for my consideration are :

1. Whether the petitioner has made out sufficient grounds to allow the present application?
2. What order ?

7. After considering the arguments addressed by both the sides and documents produced before me, I proceed to answer the aforementioned points for consideration as under:-

POINT No. I : in the Negative.

POINT No.II : as per the final order

For the reasons detailed hereunder,

REASONS

8. POINT NO.I : Heard and perused the entire pleadings and also the application filed by the plaintiff. It is incumbent to note here that the DW2 evidence he stated the Padmawathi is his daughter but neither the counsel suggested whereabouts of said Padmawathi and even her childrens. The

plaintiff in his earlier application U/O XXIII rule 1 he clearly admits the son and wife of the late Shamsundar not known to the plaintiff. Further defendant No.1 and 2 have agreed to put fencing by fixing boundaries. Later the defendant No.1 and 2 appeared and submits there is no such settlement and also the death of the surviving son of Late. Shamsundar by name Ramesh.

9. by going through the entire application, pleading of the plaintiff it is incumbent note her that the plaintiff have not prayed any relief against Padmawathi or other persons only to drag on the proceedings the plaintiff for one or other reasons filing application after applications. During the argument stage the plaintiff has filed recall and reopen of further evidence of PW1. This court perusing the age of the suit to avoid multifarious litigation allowed the application on cost of Rs.5,000/-. Now he files present application to include the said Padmawathi as a necessary party. But in my opinion the plaintiff has files the suit for declaration against defendant No.1 to 3 not against the any other persons. Therefore in my humble opinion the proposed defendant No.7 is neither

necessary party nor proper party to effectual adjudicate the matter. Therefore on cost of Rs.1,000/- the present application is dismissed. Hence from the above discussion I answer point No.I in the **Negative**.

10. Point No.2: As per the final order, as under

ORDER

“The application filed by the present petitioner under Order I Rule 10(2) of CPC is hereby dismissed on cost of Rs.1000/-.

Further the Rs.1000/- cost shall be deposited to TLSA Lingasugur.

(Dictated to the typist, corrected, initialed and then pronounced in the open court on this the 18th day of July 2022.)

sd/-
Addl., Civil Judge & J.M.F.C.,
Lingasugur.

(Order pronounced in the open court vide separate order sheet)

ORDER

“The application filed by the present petitioner under Order I Rule 10(2) of CPC is hereby allowed.

The Plaintiff is hereby directed to carry out the amendment and file the amended plaint within the time limit prescribed. Call on 18-04-2022.

Sd/-

Addl. Civil Judge & J.M.F.C.,
Lingasugur.

