



**IN THE COURT OF THE PRL. SENIOR CIVIL JUDGE & CJM.,
AT RAMANAGARA**

:PRESENT:

Presided Over by:- Smt.Saraswathi K N., B.A.L., LL.M.,
Prl. Senior Civil Judge & CJM,
Ramanagara.

DATED : THIS THE 7th DAY OF JUNE, 2023

O.S.No.101/2015

Plaintiffs : Smt. Savithramma and others

-V/s-

Defendants : Sri. Shivaramakrishna and others

Parties to I.A.No.16 and 17

Applicants : Smt. Savithramma and others

- (Plaintiffs)

-V/s-

Opponent : Smt. Sharadamma

- (Proposed Defendant No.5)

ORDERS ON IA No.16 AND 17

The Counsel for the Plaintiffs has filed I.A.No.16 under
Order I Rule 10(2) r/w Sec.151 of CPC., seeking to implead



the proposed Defendant No.5 as additional Defendant in this suit.

2. In the affidavit accompanying the present application, the Plaintiff No.3 has sworn that, she, along with the other Plaintiffs has filed the suit seeking the relief of partition and separate possession. That, during her cross examination by the Counsel for Defendants, it is suggested to her that, her father and her brothers have sold Sy.No.101/8 even before her marriage in favour of one Sharadamma. At that time, due to the ignorance about the said transaction, she answered negatively to the said suggestion. Thereafter, as per the suggestion of her Counsel, when she obtained the certified copy of the said sale deed, she came to know that, her father and her brothers have sold the Item No.6 of the suit schedule properties in favour of the proposed Defendant No.5 without their knowledge. Therefore, it is necessary to implead the proposed Defendant No.5 as a party to the present suit, since she is a necessary party to the suit. Hence, by allowing this application, no loss or hardship is going to be caused to the other side and on the other hand,



by rejecting the same she will be the loss and hardship. Accordingly, she has prayed to allow the application.

3. Per contra, the Counsel for the proposed Defendant No.5 has filed objection to the present application by opposing to allow the same on the ground that the contents of the affidavit sworn by the Plaintiff No.3 is false. It is contended that the proposed Defendant is the purchaser of the suit schedule Item No.6 property from the father and the brothers of the Plaintiffs through registered sale deeds dated:- 26.09.1980 and 18.07.1983. By virtue of the same, the proposed Defendant No.5 is in possession and enjoyment of the said property. Therefore the present application is liable to be dismissed. Accordingly it is prayed to to dismiss the application with exemplary costs.

4. The counsel for the Plaintiff has also filed I.A.No.17 under Order VI Rule 17 r/w 151 of the CPC., seeking permission to amend the plaint so as to plead about the sale deed executed by her father and her brothers in favour of Defendant No.5 on 06.10.1980 and 18.07.1983. Therefore it is necessary to plead about the said sale deeds as well as seek the relief of declaration in respect of the said



sale deeds and also the include the suit schedule Item No.6 in the plaint schedule.

5. There is an affidavit sworn in support of the present application by the Plaintiff No.3

6. There is no objections filed by the Defendants to the present application.

7. Heard the Counsel for the Plaintiffs and proposed Defendant on I.A.No.16 and 17 and perused the materials on record.

8. The following points would arise for the consideration of this Court:-

- 1) Whether the I.A.No.16 filed by the Plaintiffs under Order I Rule 10(2) r/w Sec.151 of the CPC., deserves to be allowed?
- 2) Whether the I.A.No.17 filed by the Plaintiffs under Order VI Rule 17 r/w Sec.151 of the CPC., deserves to be allowed?
- 3) If so, what order?



9. My answers to the above points are as under:-

Point No.1 &2 : In the Negative;
Point No.3 : As per the final order
for the following:

REASONS

10. Point No.1 & 2: This suit filed by the Plaintiffs against the Defendants seeking the relief of partition and separate possession and consequential relief of declaration in respect of the suit schedule Item No.4 property through the sale deed dated:- 11.11.1993.

11. The record reveals that, on the basis of the rival pleadings of both the parties, this Court has framed the issues and thereafter both the sides have also lead their evidence. At this stage, the Counsel for the Plaintiffs has come up with the present applications seeking to implead the proposed Defendant No.5 and permission to plead about the sale deeds of the Defendant No.5 and also to add the prayer relating to the sale deeds of the proposed Defendant No.5.



12. It is pertinent to note that, as per the well settled position of law in a suit for partition, it is not necessary for the Plaintiffs to seek the relief of declaration with regard to the sale deed, which is executed in respect of the suit schedule property and it is sufficient for the Plaintiffs to seek the relief of partition and separate possession. However, in the present case, the proposed Defendant No.5 has furnished the photocopies of the sale deed in respect of which the Plaintiffs have sought to implead her as an additional Defendant in this suit and also to amend the pleadings. In such circumstance, it is necessary to prayer pleadings to do so.

13. However, it is pertinent to note that, the sale deeds of the proposed Defendant No.5 are prior to the cut off date of 20.12.2004 as per the proviso to Sec.6 of the Hindu Succession (Amendment) Act. Moreover considering the dates of the sale deeds of the proposed Defendant, it is clear that as on the date of the said sale deeds the Plaintiffs were not the co-parcenors even under the Hindu Succession (Karnataka) Amendment Act, 1990 which came into force from 30.07.1994. In such circumstance, the Plaintiffs cannot seek the relief in respect of the said sale deeds even



by virtue of the proviso to Sec.6 of the Hindu Succession (Amendment) Act. Therefore, the proposed Defendant No.5 is not a necessary party to the present suit. Hence, there is no merit in the present applications filed by the Plaintiff. Accordingly, **these Points are answered in the Negative.**

14. Point No.3:- In view of my answer to Point No.1 and 2, I proceed to pass the following:-

ORDER

I.A.16 filed by the Plaintiffs under Order I Rule 10 (2) r/w Sec. 151 of the CPC., and I.A.No.17 under Order VI Rule 17 r/w Sec.151 of the CPC., are hereby rejected.

In the circumstances, no order as to costs.

(Dictated to the Stenographer transcribed by her, corrected, signed and then pronounced by me in the Open Court on this the 7th day of June, 2023).

Prl.Senior Civil Judge and CJM,
Ramanagara.