

**IN THE COURT OF THE PRL. SENIOR CIVIL JUDGE
AND CJM AT RAMANAGARAM**

Dated : This the 02nd day of January 2017

Present

Smt. M.ANITHA.,
B.Sc., LL.B.,
Prl. Senior Civil Judge & CJM,
Ramanagaram.

O.S 377/2012

Plaintiff : Sri.Thimmaiah @ Thimmegowda

(By Sri. S.L., Advocate)

V/s

Defendants : Sri.Thimmaiah and others

(D-1, 2, 2(a) Sri. S.R., Advocate)
(D-2(b), 2(c) Sri. M.D.K., Advocate)
(D-3 and 4 Sri. S.G., Advocate)

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**ORDERS ON I.A No.6 FILED BY THE PROPOSED
DEFENDANT U/O 1 RULE 10 R/W SEC.151 OF CPC**

The applicant by name Kaggalaiah being the proposed defendant has filed this application to implead him as the defendant in the present suit.

2. In his supportive affidavit to the application, the said applicant deposed that, he is also having share in the suit schedule properties. But, the plaintiff purposefully has not made him as party to

the suit. The suit schedule properties are the joint family properties of himself, plaintiff and the defendants. No partition has been affected in respect of the suit schedule properties. One of the suit schedule properties bearing Sy.No.3/3 of Hirrehalli village stood jointly in the names of his paternal grand father Kariyappa and the grand father of the plaintiff and other defendants. Despite, he is not made as a party to the suit.

3. Besides, the applicant deposed in his supportive affidavit that, the kartha of the joint family by name late.Thimmaiah had three younger brothers namely Veerabhadraiah, Hombaiah and Malegunaiah, there is no partition between the said four brothers. The legal heirs of the brothers of said Thimmaiah are not made as parties in the present suit and only the legal heirs of Thimmaiah are made as parties so as to defeat the rights of the legal heirs of the brothers of said Thimmaiah. The suit schedule properties are the ancestral properties of said Thimmaiah and the brothers of Thimmaiah. The applicant is the legal representatives of said Kaggalaiah S/o Doddahombaiah. Wherefore, he is also a necessary and proper party to the suit. Hence, it is prayed to allow the application.

4. The plaintiff resists the application stating that, there is no nexus between the proposed defendant and parties to the suit on record. The proposed defendant is not the joint family member and he has no right in the suit schedule properties. Except the plaintiff and the defendants on record, no other person has right in the suit schedule properties. The application is not supported by necessary documents and the proposed defendant has not produced Genealogical Tree. The land bearing Sy.No.3/3, measuring 2 acres 9 guntas is the joint family property of plaintiff and defendants on record. The proposed defendant on taking undue advantage of the litigation has filed the baseless application before this court. The proposed defendant is a stranger to the family of plaintiff and defendants. Wherefore it is prayed to dismiss the application with costs.

5. The legal representative of deceased defendants No.1 and 2 also filed objections to the current application stating that, there is no nexus between the proposed defendant and to the family of defendants. The proposed defendant is not their family member and he has no right in the suit schedule properties. The original propositus of the

family Thimmaiah himself has no right in the properties since the property is the self acquired property of the father of defendant No.1 and 2. The proposed defendant has made false statement in his affidavit that, the land bearing Sy.No.3/3, measuring 2 acres 9 guntas was granted by the Government in favour of Chikkeeraiah the father of 1st defendant and the 2nd defendant. In the said property the proposed defendant has no right. Wherefore, it is prayed to dismiss the application with costs.

6. Now the following points emerge for determination:-

1. Whether the proposed defendant is a proper and necessary party for complete and effective adjudication of the suit?

2. What order?

7. Having heard the arguments of both the counsels, I have perused the written arguments filed by the counsel for proposed defendant. Coupled with it, I have scrutinized the application in the backdrop of materials made available. Now findings of the Court on the above points are as under:-

Point No.1:- In the Affirmative

Point No.2:- As per final order

for the following:-

REASONS

8. **Point No.1:-** As it could be seen from the pleadings and documents produced by the parties to the suit on record, the suit is in between the siblings of deceased Thimmaiah. To elaborate, the plaintiff by name Thimmaiah @ Thimmegowda has instituted this suit for partition against the legal representatives of his deceased senior and junior uncles as well against one of his junior uncles the defendant No.2.

9. According to proposed defendant/applicant, he is one of the great grand son of one Veerabhadraiah and the said Veerabhadraiah is one of the brothers of late.Thimmaiah. The said Thimmaiah is the grand father of the plaintiff herein. Towards this end, the applicant has produced the notarized copy of the genealogical tree along with certificate of genealogical tree, one RTC extract and survey sketch, wherein, the name of one Kariyappa S/o Veerabhadraiah finds place. Of course, the proposed defendant has not produced the said

documents as on the date of filing of his current application. But, he has produced the said documents subsequent to the filing of his application. But the fact remain is that, the application on hand is supported by the documents produced by the applicant.

10. On comparison of the genealogical tree produced by the plaintiff along with genealogical tree produced by the proposed defendant, prima facie it appears that, the proposed defendant is related to the family of plaintiff and defendants. No doubt, the applicant is not the legal representatives of the original propositus Thimmaiah. As it could be seen from the records, the applicant is one of the legal representatives of the brother of said Thimmaiah. More so, the name of the grand father of the applicant namely Karriyappa S/o Veerabhadraiah finds place in the revenue records related to Sy.No.3/3. Wherefore, it appears to the court that, the proposed defendant may have some right in the said landed property and it is to be established after full fledged trial. Overtly, the suit is instituted for the relief of partition and therefore the persons claim to be the joint family members and as a person

having share in the property is proper and necessary party to the suit. Wherefore, it appears to the court that, the proposed defendant is a proper and necessary party to the suit so as to adjudicate the real controversy between the parties. Hence, I am inclined to hold the point is in the “Affirmative” and proceed to pass the following:-

ORDER

I.A-6 filed by the proposed defendant U/o 1 Rule 10(2) of CPC is hereby allowed.

(Dictated to the Stenographer, transcribed by him, the transcript corrected and then pronounced by me in the open Court on this the 02nd day of January 2017)

**Prl., Senior Civil Judge & CJM,
Ramanagara.**