

Orders on I.A. No.21 under Order I Rule 10(2) of CPC.,

This application is filed by the Plaintiff seeking to implead the proposed Defendant No.20 to 22 as the additional Defendants in the present suit.

2. In the affidavit sworn in support of the aforesaid application, the Plaintiff No.1 has sworn that, they have filed this suit against the Defendants seeking the relief of Partition and Separate Possession. That the proposed Defendant No.20 is the wife of the Defendant No.2 of this suit and that there are certain properties purchased by the Defendant No.2 in her name through sale deeds dated 18-03-2010, 13-11-2009 and 14-05-2016 and 18-02-2010 from out of the income derived from the joint family properties. Therefore, it is necessary to implead her as the additional Defendant in this suit and also to include the said properties also in this suit, since they have right to claim share over the said properties.

3. That in so far as the proposed Defendant No.21 and 22 are concerned, during the pendency of the suit, the Defendant No.4 has sold the suit schedule item No.19 property in favor of the proposed Defendant No.21 and 22

through sale deed dated 10-03-2021. hence, it is necessary to implead the said parties as the additional Defendants in this suit as they are the purchasers of the said property during the pendency of the suit. Hence, it is prayed to allow the application.

4. Per contra, in pursuance of service of notice, the proposed Defendant No.20 has appeared through her counsel and got filed objections to the present application by opposing to allow the same on the ground that the same is not maintainable. That the properties proposed to be included in this suit are her sthridhana properties since the source of funds to purchase the said properties was met by her through her parents and as such, she is not a necessary party to the suit and the said properties also do not constitute the joint family properties.

5. It is alleged that the Plaintiffs have intentionally filed this application to implead her as the Defendant in this suit only because of the fact that she is the wife of the Defendant No.2. that the Plaintiffs have already their share of the properties and they have also executed the registered Relinquishment Deed and thereby they have waived off their rights. Now they have come up with this false and frivolous application only with an intention to harass them. Hence, on these among the various other grounds, she has prayed to reject the application with costs.

6. It is seen that, despite the service of notice, the proposed Defendant No.21 and 22 have not appeared and filed objections to the present application.

7. Heard the counsels for the Plaintiffs and the proposed Defendant No.20 on the present application and perused the material on record.

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

i) Whether the IA. No.21 filed on behalf of the Plaintiff under Order I Rule 10(2) r/w Sec.151 of the CPC., deserves to be allowed?

ii) If so, what order?

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

Point No.(i) : Partly in the Affirmative;

Point No.(ii) : As per the final order
for the following:-

REASONS

10. **Point No.(i):-** Admittedly, this is a suit for partition and separate possession filed by the Plaintiff against the Defendants.

11. The record reveals that already the trial of the case

has already commenced. The evidence on the Plaintiff side is already commenced. When the case is posted for the further chief examination of P.W.1, there are I.A's seeking various reliefs filed by the parties to the suit. Now through the present application, the counsel for the Plaintiffs is intending to implead the proposed Defendant No.20, who is admittedly the wife of the Defendant No.2 on the ground that, there are various properties purchased by the Defendant No.2 in the name of his wife/proposed Defendant No.20 from the income derived from the joint family properties. Hence, it is sought to include the said properties as well as to implead the Defendant No.20 as the additional Defendant in this suit.

12. It is seen that, the proposed Defendant No.20, who has filed objections to the present application has not denied that she has purchased the proposed items of the properties. However she has claimed that the said properties were purchased by her from the money that was paid to her by her father and hence, they constitute her Stridhana properties and hence, none has right to question the same.

13. However when it is clearly admitted by the Plaintiffs themselves that there are certain properties purchased in the name of the proposed Defendant No.20 by the Defendant No.2, then such properties fall within the purview of Sec.14 of the Hindu Succession Act, over which, none can claim share during the life time of the proposed

Defendant No.20. Therefore, in so far as the claim of the Plaintiff against the proposed Defendant No.20 is concerned, the same is not tenable. As such, neither the properties in the name of the proposed Defendant No.20 nor the proposed Defendant No.20 could be impleaded in this suit at the instance of the Plaintiffs. Therefore, the application in so far as it relates to the proposed Defendant No.20 is concerned is liable to be dismissed.

14. The I.A in so far as it relates to the proposed Defendant No.21 and 22, there is no denial of the fact that during the pendency of this suit, they have purchased the suit schedule item No.19 property from the Defendant No.4. in such circumstance, lis pendens applies to the said transaction and they are the necessary parties to the suit. Therefore, the application as relating to them deserves to be allowed. As such, they are the necessary parties to the suit. Hence, the present application filed by the Plaintiffs deserves to be allowed in part. Accordingly, **this Point is answered partly in the Affirmative.**

15. **Point No.(ii):-** In view of my answer to Point No.1, I proceed to pass the following:-

O R D E R

I.A. No.21 filed by the Plaintiffs under Order I Rule 10 (2) r/w Sec.151 of the CPC., is hereby allowed in part.

The I.A in so far as it relates to the proposed Defendant No.20 is hereby rejected.

The Plaintiffs are permitted to be implead the proposed Defendant No.21 and 22 as the additional Defendants in this suit.

The counsel for the Plaintiffs shall carry out amendment to the cause title of the plaint and file amended plaint.

**Prl. Senior Civil Judge & C.J.M.,
Ramanagara.**