

-:: ORDER ON I.A. U/O. 1 R. 10(2) OF C.P.C. R/W
SEC.151 OF C.P.C ::-

The applicant has filed this I.A U/o.1 R 10(2) R/w Sec.151 of C.P.C. praying to impleaded as defendant No.4 and 5 in this suit, in the interest of justice.

2. In the accompanying affidavit it is stated that, the plaintiff has filed the suit for permanent injunction against the defendants restraining them from interfering in the possession and enjoyment of the suit schedule properties. She do not know who are the plaintiffs in this case. In the plaint it is averred that, the suit schedule properties are originally owned by one late Vekatappa and his wife Kempamma who are their grand parents. After the death of Venkatappa the suit schedule properties are allotted in favour of their father B.V. Lakshmana in partition dtd., 24.11.2007. It is true that, Lakshmana is her son, but the plaintiffs are not his daughters. Her son Lakshmana married one Shobha. She is having a daughter by name Roopa and

living at Thumakuru at present. These plaintiffs are not at all concerned to their family and not the daughters of her son Lakshmana.

The applicant further submits that, these plaintiffs filed this frivolous suit against her sons seeking injunction against them. But the suit schedule properties are not the ancestral properties of her son Lakshmana but these properties are her father's ancestral properties. Her father late Marisuggaiah inherited these properties from his ancestors. Herself and her sister late Siddamma are the only daughters to him. Her sister Siddamma filed a suit in O.S. No. 537/2014 against her and her children for partition and separate possession of the suit schedule properties which were owned by her father which is pending on the file of the Senior Civil Judge and JMFC at Kanakapura. After the death of her sister Siddamma her children came on record they informed her that, her sons are attending a case in this court wherein her father's property is subject matter and asked her why she is pretending as if she do not know anything. Then she inquired with her children and came to know that, these plaintiffs filed a case for

permanent injunction against her sons for the property which is still subject matter of a suit for partition between her and her sister and properties inherited by her husband from his ancestors are the subject matter. But cunningly her father's properties which are the suit schedule properties in this case are included without her knowledge. She is illiterate person and cannot read and right. Believing her children's words she put her thumb impression on the partition deed without knowing the contents of it. On all these grounds applicant prays to allow the application.

3. On the other hand plaintiffs have filed objections and contended that, the application filed by the impleading applicant is not maintainable either in law or in facts. The plaintiffs herein have filed the instant suit seeking the relief of permanent injunction in respect of suit schedule properties. The plaintiffs are the joint owners and are in possession and enjoyment of the suit schedule properties from time immemorial. Originally the suit schedule properties were owned and enjoyed by one Late Venkatappa and his wife Kempamma,

grandparents of the plaintiffs herein. After the death of Venkatappa, the suit schedule properties were allotted in favour of the father of plaintiffs one B.V. Lakshmana in a partition dated: 24.11.2007 effected in between the family members. In terms of the said partition, the katha was effected in the name of father of plaintiffs one B.V. Lakshmana in respect of the schedule properties.

Plaintiff further submit that, the family of B.V. Lakshmana consists of his wife Basavarajamma and two daughters, the plaintiffs herein. On 22.01.2014, a Partition Deed was executed amongst the family members of the plaintiffs whereby the suit schedule properties were jointly allotted in favour of the plaintiffs herein. The revenue records in respect of the schedule properties have been entered jointly in the names of the plaintiffs and they have paid up to date taxes to the concerned authorities. Except the plaintiffs, there are no other persons having any manner of right, title and interest over the suit schedule properties.

Plaintiff further submit that, the defendants are brothers of father of plaintiffs by name B.V. Lakshmana and uncles of the plaintiffs and they are enjoying the other properties in the village which were allotted in their favour in the partition dated 24.11.2007. The defendants herein taking an advantage that the plaintiffs are women, are trying to knock off the suit schedule properties. Infact, on several occasions the defendants demanded the plaintiffs to sell the suit schedule properties in their favour for throw away price. Since the defendants on 23.08.2020 and 24.08.2020 along with their supporters tried to interfere with the possession of the plaintiffs and tries to destroy the standing ragi crops grown by the plaintiff, the plaintiffs filed the instant suit seeking the relief of permanent injunction. The proposed defendant No.4 & 5 have further contended that the suit schedule properties are not the ancestral properties and that the sister of proposed defendant No.4 by name Siddamma has filed O.S No. 537/2014 seeking partition and separate possession and the same is pending consideration. It is further contended that, the suit schedule

properties even though are not ancestral properties are included in the partition deed and subject matter of the instant suit. It is further contended that, when the share of proposed defendant No.4 is not demarcated, her son B.V. Lakshmana cannot get any right or interest over the said properties and hence the suit is not maintainable.

It is submitted that, the claim made by the proposed defendant No.4 and 5 is without any basis and materials. The proposed defendant No.4 and 5 have no manner of right, title and interest over the suit schedule properties and they have also not questioned the partition dated 24.11.2007 wherein the father of the plaintiffs acquired the suit schedule properties. The proposed defendant No.4 and 5 without questioning the partition effected on 24.11.2007 cannot seek to implead in the instant suit claiming that the suit schedule properties are not the ancestral properties. Infact, the instant suit is filed seeking the relief of permanent injunction in respect of the suit schedule properties. The plaintiffs being the dominoes litis is entitled to file a suit against persons whom he wants to seek any relief. Since the

defendant No.1 to 3 herein tried to interfere with the possession and enjoyment of the plaintiffs over the suit schedule properties, the instant suit came to be filed. As such, the proposed defendant No.4 & 5 since have no manner of right and title over the suit schedule properties are in no way connected in the instant suit and they are not proper and necessary parties for proper and effective adjudication of the instant suit. As such, the application filed by proposed defendant No.4 & 5 seeking to implead in the suit is liable to be dismissed. On all these grounds defendant No.4 and 5 prays before this court to dismiss the application.

4. Heard and perused material on record.

5. On perusal of the entire material available on record this court noticed that the present suit against the plaintiff for permanent injunction and such other relief. In the meanwhile the proposed defendant No.4 and 5 filed a present application to implead them as party in the suit. The main contention of the defendant No.4 is that the

suit schedule property belongs to her father, who inherited the same from his ancestors. Defendant No.4 and her sister Siddamma are the only daughters to him. So they both filed partition suit before Senior Civil Judge the same was pending for disposal. The property claimed by the plaintiff in the present suit are inherited by their father Lakshmana in the partition effected in the family. The proposed defendant No.4 and 5 submits that they are very necessary parties for proper disposal of the suit.

The Order-1 R-10(2) CPC read as under:-

" The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may be appears to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant be struck out, and that the name of any person who ought to have been joined whether plaintiff or defendant or whose presence before the Court may be necessary in order to enable the court effectually and completely who adjudicate upon and settle all the question involved in the suit be added."

7. As per above said provision the Court can implead any person to the suit at any stage of the proceedings, if the said person is necessary to settle all the questions involved in the suit. Hence in order to avoid the multiplicity

of the proceedings, it is necessary to permit the applicants to implead the proposed the defendant No.4 & 5. Therefore the application is deserves to be allowed. Hence, this court proceed to pass the following:

: O R D E R :

**The I.A. filed by the applicant U/o.1 R. 10 R/w
Sec. 151 of C.P.C is hereby allowed.**

**The applicants are hereby permitted to
implead them as defendant No.4 & 5.**

For amendment and amended plaint.

**Sd/-
II Addl. Civil Judge & JMFC.,
Kanakapura.**

(order pronounced in open court vide
separate order)

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