

ORDER ON I.A.NO.VIII

The learned counsel for plaintiff has filed I.A.No.VIII under Order I Rule 10 R/W. Order 6 Rule 17 of CPC to implead proposed parties as defendants in the present suit as sought for.

2. On the other hand, counsel for defendants has filed objection to the aforesaid application.

3. Heard on both sides.

4. After going through the application with affidavit points arise for consideration of this court are;

1. Whether the applicant has made out grounds to implead the proposed parties as defendants to the suit as required under Order I rule 10 of CPC?

2. To what order?

5. This court answer to the above points are as under:

Point No.1: In the affirmative.

Point No.2: As per the final order
for the following:

REASONS

6. **Point No.1:-** The instant suit is one filed for the relief of partition, permanent prohibitory Injunction and declaration.

7. Through the I.A.No.VIII, the plaintiff has sought to implead the proposed parties as a defendants in the suit. The reasons assigned by the plaintiff in the annexed affidavit are that, legal heirs of Somla Naika who was a Revenue Officer are in possession and enjoyment of the item No.2 and 3 of the schedule properties. The said Somla Naik being the Tevenue Officer holding power and was able to swallow the properties of Smt.Hemli Bai by getting fraudulent document which is an admixture of partition and relinquishment of rights of Hemli Bai dated 15-03-1997 enforced between Somla Naik and Hemli Bai W/o late.Tholacha Naik and the said fraudulent registered deed executed before Sub-Registrar, Tarikere come to her knowledge. Now the said Somla Naik is dead and he plaintiff is not able to bring the legal heirs of Somla Naik who has committed

fraud. Now the legal heirs of the Somla Naik are having khata in their names. If the legal heirs of Somla Naik are not brought on record, she will be put to great hardship, irreparable loss and injury which cannot be compensated in any manner.

8. On the other hand, defendant has filed objection by contending that, what is the ranking of Somla Naik in the present suit and without arraying L.Somla Naik S/o Lacha Naik as a party to the suit, the question of seeking amendment to bring his LR's on record does not arise at all. If at all the applicant is having any grievance regarding non inclusion of parties the provisions of CPC or very wide and the applicant is having separate provision to include the legal heirs of Somala Naika as parties to the suit. When deceased Somla Naik is not a party to the original suit, question of making amendment to bring his legal heirs on record does not arise at all. The provision of order 1 Rule 10 is very clear that, any person having interest over the property can be included as party to the suit by the leave of the court and it will not take away the

right of the applicant as contemplated in order II Rule 2 of CPC. Hence, prays to reject the application.

9. The deceased Somala Naik is a purchaser of the suit schedule agricultural lands and he died living behind proposed defendants. without the presence of purchasers of the suit schedule properties, the suit for partition cannot be adjudicated completely and effectively. Therefore, the proposed defendants are the necessary parties to the suit. Thus, if the application is allowed no hardship and prejudice cause to the other defendants. Hence, in the touchstones of the reasons assigned above, this court answer point No.1 in the **affirmative**.

10. **Point No.2:** In view of my findings on Point No.1, this court proceed to pass the following:

ORDER

The I.A.No.VIII filed by the proposed applicant under Order 1 Rule 10(2) r/w Sec.151 of CPC is hereby allowed with cost Rs.100/-.

O.S.No.264/2018

The proposed applicants are impleaded as defendant No.4 to 6.

Directed the learned counsel for plaintiff to carry out necessary amendment to the plaint and furnish amended plaint on next date of hearing.

Call on 27-02-2024.

**I A.C.J. & JMFC.,
Bhadravathi.**