

KASM310070832022



**IN THE COURT OF PRL. CIVIL JUDGE & JMFC., AT
BHADRAVATHI.**

Present: **Sri. RAVI KUMARA. V. BA.L.,L.L.B.,**
Prl. Civil Judge & JMFC.,
Bhadravathi.

DATED THIS THE 6th DAY OF FEBRUARY -2025.

FDP No.18/2022

Petitioners :1) Smt.Vijayamma W/o Late Premkumar,
Aged about 46 years,

2) Kavya T.P D/o Late Premkumar,
Aged about 23 years,

Both are R/o Doddahatti,
Tarikere Town, Tarikere Taluk,
Chickmagalur District.

V/s

Respondents :1)Kariyappa S/o Late Govindappa,
Aged about 65 years,

2) Hanumanthappa S/o Late Govindappa,
Aged about 60 years,

3) Mohan S/o Late Govindappa,
Aged about 50 years,

All are R/o Kabalikatte Village,
Kudligere Hobli,
Bhadravathi Taluk.

- 4) Smt.Uma D/o Late Govindappa,
W/o Bhimanna,
Aged about 55 years,
R/o Kote, Ayanuru Village,
Shivamogga Taluk.

I.A.No.II

- Applicants :**
- 1) Smt.Girijamma @ Girija
W/o Late Premkumar,
Aged about 50 years,
 - 2) Thanushri K.P.
D/o Late Premkumar,
Aged about 28 years,
 - 3) Shalini K.P
D/o Late Premkumar,
Aged about 26 years,
 - 4) Manojkumar K.P.
S/o Late Premkumar,
Aged about 23 years,

All are R/o Kablikatte, Devarahalli,
Bhadravathi Taluk.

(Rept. by Sri.D.H.N, Adv)

V/s

- Opponents :** Smt.Vijayamma and another

(Rept. by Sri.L.G, Adv)

ORDERS ON I.A.NO.II

The applicants No.1 to 4 herein filed this IA under Order 1 Rule 10 of CPC and praying to implead them as respondents No.5 to 8 in the present petition.

2. In the affidavit accompanying to the IA, the applicant No.1 Girijamma @ Girija has stated that herself and the applicants No.2 to 4 are the wife and children of Late Premkumar. That, the petitioners herein are not the wife and daughter of said Premkumar and they have filed the suit in O.S.261/2020 by creating false genealogical tree, marriage invitation and other documents and have succeeded in obtaining a preliminary decree for partition and separate possession of the suit property vide judgment dated 8.7.2022.

2.1 It is further stated that, the applicants have come to know about the aforesaid decree when the court commissioner in the present petition had visited the suit property situated at Kabalikatte Village. It is further stated that the marriage of the applicant No.1 and late Premkumar was solemnized on 2.8.1988 at Kachigondanahalli Village and

out of their wedlock applicants No.2 to 4 have born. It is further stated that during the life time of Premkumar he had a insurance policy at National Insurance Company Limited, for which applicant No.1 was made as nominee. The applicants alleged that, the plaintiffs/petitioners have filed a suit in O.S.261/2020 without arraying the applicants as parties and obtained decree from this court and further filed this final decree proceedings to defraud their legitimate share in suit properties. Hence, they prays to allow the IA.

3. Per contra, the petitioners filed their objections to the IA and contending that the applicants have created the documents and filed this application on baseless ground. It is further contended by the petitioners that the applicants were not the parties to the suit in O.S.261/2020 and hence impleading them in the present final decree proceedings does not arise. They further contending that the present IA is not maintainable either under law or under facts. Hence, they pray to dismiss the IA with cost.

4. In view of the rival contentions of both the parties, the following points are arises for my consideration;

1. Whether the applicants have made out any grounds to implead them as parties to the present final decree proceedings?

2. What order?

5. In support of the IA, the applicants have produced genealogical tree, copies of insurance policy, ration card, death certificate of late Premkumar, Marks card belongs to the applicants No.2 to 4 along with Adhar cards.

6. I have heard both sides.

7. Perused the entire materials available on record.

8. My answers to the above points are as follows:

Point No.1 : **In the Affirmative.**

Point No.2 : **As per final order,**

for the following;

REASONS

9. **Point No.1:** It is undisputed that the petitioners herein are said to be wife and daughter of late Premkumar. That, the petitioners earlier filed a suit in O.S.261/2020

against the mother, brothers and sister of late Premkumar seeking the relief of partition and separate possession in respect of the suit property. It is also not under dispute that the said suit was decreed and the petitioners herein were declared to be entitled to 1/5th share along with the respondents No.2 to 4 herein. It is noticed that the respondents herein have not chose to contest the aforesaid suit. It is also remained undisputed that the petitioners have filed this final decree proceedings for allocation of their shares in the suit property as per preliminary decree.

10. It is evident from the judgment passed in O.S.261/2020 that the petitioners herein have obtained the preliminary decree by pleading that they are only wife and daughter of deceased Premkumar. It is also not disputed that the petitioners and the respondents herein have not disclosed anything about the present applicants in the suit or in this proceedings. It is further evident that the suit property is said to be a joint Hindu property and therefore, the plaintiffs

herein have allotted 1/5th share of Premkumar in their favour.

11. The record further reveal that a court commissioner was appointed by this court for demarcating of 1/5th share allotted to plaintiffs/petitioners in the suit property. Meanwhile, the applicants have come with this IA. As already said, the applicants are seriously contending that they are also the wife and children of late Premkumar and have their legitimate share in the suit property as the legal heirs of said Premkumar. The documents produced by the applicants would also support their claim. Interestingly, the petitioners herein are absolutely not disputing the alleged relationship of the applicants with Late Premkumar. Under said circumstances, it is apparently clear that the applicants herein are also the legal heirs of deceased Premkumar. Since the shares of this petitioners herein in the suit property was allotted on the ground that they are the legal heirs of deceased Premkumar and since now it is evident that these applicants are also heirs of said Premkumar, certainly right of

the applicants involved in the said share of late Premkumar. Hence, they absolutely become necessary parties for the present proceedings.

12. It is true and admitted fact that the present petitioners were not made as parties to the suit in O.S.261/2020. It is also true that there is no preliminary decree passed in favour of the applicants. But, the said fact alone will not disentitle the applicants either for their legitimate share, if any, in the suit property nor preclude this court from impleading them as parties to this final decree proceedings. It is settled position of law that a suit for partition continue to be pending until a final decree is draw on the stamp paper. Unless final decree is not drawn, the suit for partition presumed to be pending and court can draw any number of preliminary decrees by determining rightful shares of all the share holders. Under said circumstances and since the petitioners themselves not disputing the relationship of the applicants late Premkumar, their objection to this IA does not survive.

13. For the all aforesaid reasons, the present application deserved to be allowed. Or otherwise, it will lead to multiplicity of proceedings. It is true that there is no conclusive proof as on this day to hold that these applicants are entitled to any share in the suit property. However, their alleged share shall be determined by holding an enquiry in the present petition. Hence, these applicants are nothing but the necessary parties to this proceedings and hence they are entitled to be impleaded to this proceedings. Accordingly, **Point No.1** is answered in the **Affirmative**.

14. Point No.2: Resultantly, I proceed to pass the following;

ORDER

**I.A. No.II filed by the applicants
under Order I Rule 10 of CPC is hereby
allowed.**

**The applicants are permitted to
be impleaded in the final decree
proceedings.**

**The petitioners are directed to
amend the original petition and to
furnish the amended petition on or
before next date of hearing.**

(Dictated to the Stenographer, translated, computerized by her, corrected and then pronounced by me in open court this **6th day of February-2025**)

(Ravi Kumara V.)
Prl. Civil Judge & JMFC.,
Bhadravathi.

(Pronounced in the open court vide separate Order)

ORDER

I.A. No.II filed by the applicants under Order I Rule 10 of CPC is hereby allowed.

The applicants are permitted to be impleaded in the final decree proceedings.

The petitioners are directed to amend the original petition and to furnish the amended petition on or before next date of hearing.

Call on 15.03.2025.

Prl. Civil Judge & JMFC.,
Bhadravathi.