

IN THE COURT OF THE SENIOR CIVIL JUDGE AND
J.M.F.C., AT CHIKKANAYAKANAHALLI.

Present:- Sri. SATISH S.T., B.Com., LL.B.,
Senior Civil Judge and J.M.F.C.,
Chikkanayakanahalli.

Dated :- This the 16th day of September, 2025

FDP.No.1/2023

PETITIONER: C.K.Jayaram

V/S

RESPONDENT: S.Saraswathi & Others

PARTIES IN IA.No.5

APPLICANTS: C.V.Puttaiah & Others

V/S

PETITIONER: C.K.Jayaram

ORDER ON IA.No.5

The applicants/proposed respondent No.5 to 7 have filed this application under Order 1 Rule 10(2) R/w Section 151 of CPC., praying to implead the proposed respondent No.5 to 7 as respondent no. 5 to 7 in this case.

The brief facts of the affidavit filed in support of
application are as follows:-

2. That the 2nd respondent's deceased husband Srinivas S/o Late Venkataramaiah and they are the uterine brothers, he died during the pendency of OS.No.1/2018, his wife and children are brought on record and made them as respondents No.1 to 4 in the above proceedings. Further their brother deceased Srinivas S/o Late Venkataramaiah against him and other filed OS.No.1/2018 before this Court for recovery of

money which was filed on 02.01.2018 with respect to undivided Hindu joint family Properties under the guise that their deceased brother Srinivas S/o Late Venkataramaiah executed the registered mortgage deed in favour of petitioner on 23.01.2016 raised loan of Rs.5,00,000/- for the said alleged mortgage deed neither of them are executants, signatories or consenting witnesses. However, this fact is very much in the knowledge of our deceased brother Srinivas S/o Late Venkataramaiah much more the properties shown in the registered mortgage deed are not self-acquired properties of their deceased brother. Further submitted that, they and their deceased mother Narasamma W/o Late Venkataramaiah has filed suit for partition by metes and bounds of certain properties shown in the registered mortgage deed, which was filed on 21.06.2014 before this Court for granting of 1/5th share each on suit items, in the said suit their deceased brother Srinivas S/o Late Venkataramaiah has hotly contested the partition suit before this Court in OS.No.11/2014, after the contest the suit was decreed by granting 1/4th share each in suit item No.2 of 'A' schedule property and 1/5th share on item No.3 of 'A' schedule property and suit item No.1 to 6 of 'B' schedule property by metes and bounds and the copy of the Judgment and Decree dated 02.08.2017 in OS.No.11/2014 is herewith produced for consideration of this Court. Further submitted that, he and his brothers being aggrieved by the Judgment and Decree dated 02.08.2017 in OS.No.11/2014 passed by this Court they preferred an RFA.No.2044/2018 before the High Court of Karnataka, same is pending for

consideration the certified copy of the entire ordersheet, the appeal memo in RFA.No.2044/2018 is herewith produced for consideration of this Court.

3. Further submitted that, their deceased brother Srinivas also filed RFA.No.1898/2017 the same has been dismissed for non-prosecution on 17.02.2021, the copy of the case status was downloaded by the their Counsel in computer on 08.05.2024 is herewith produced for consideration of this Court. The properties shown in the proceedings and properties shown in OS.No.11/2018 are almost one and the same, hence the annexed application. Further submitted that, after the death of their mother $1/5^{\text{th}}$ share enlarged to $1/4^{\text{th}}$ share. That their deceased brother is not the absolute owner of the mortgaged property, they are all have shares in the properties, that their deceased brother not only played fraud to us but also to this Court, thus in this view of the matter they are necessary and proper parties to adjudicate the real controversy between the petitioner and themselves with their deceased brother, without them the real controversy cannot be decided or adjudicated, by allowing the annexed application, the cause of action, nature of proceedings neither changed nor modified, he and remaining impleading applicants have good case on merits and out share decided by this Court cannot purchased by petitioner in the above proceedings and the petitioner is totally stranger to them and their share. Further submitted that, there is no delay in filing the application, if any delay kindly condones the same. If the application is allowed either party will not be put to any hardship of injury, on the other

hand the application is rejected the applicants will be put to great hardship and irreparable injury which may not be compensated in terms of money. By this submission they pray for allow the application.

4. The respondent/petitioner has filed objections to this application.

The brief facts of the objections filed by the respondent are as follows:-

5. That the petitioner has filed this petition for final decree as per the Judgment and Decree passed in OS.No.01/2018 on the file of this Court. The applicants are not the parties to the mortgage deed executed by the Judgment debtors in favour of the decree holder. In the decree it is very clear for the sale of the suit schedule properties or any portion of it for the recovery of the claim amount. The recovery amount is of Rs.9,19,219/- with interest is due from the respondent, as such the petition has been filed for final decree as per the preliminary decree after six months. The proposed applicants are not necessary parties to the final decree proceedings, when they are not parties to the preliminary decree, the question of impleading them as respondents does not survive for consideration at this juncture. The applicants are not necessary parties for the proper adjudication of the final decree proceedings. The application has been filed with an intention to harass the poor petitioner and to delay the proceedings. The application is not maintainable under law. If the application is dismissed no hardship would be caused to the applicants. If the application is allowed the petitioner will be put to

irreparable loss and injury. The balance of convenience is in favor of petitioner. There are no valid grounds have been made in the application to allow the application. The averments made in the affidavit annexed to the application are all false and incorrect. The filing of the application at the fag end of the petitioner, disclose the malafide intention of the applicants to drag the proceedings. This application has been filed at the instance of respondents. If the applicant have any right to object the sale, they have every right to file the necessary application at the time of execution of the final decree in Execution case going to be filed after the final decree. The applicants are filing one and after the another application only to drag the proceedings without any grounds. By this submission they pray for reject the application.

6. I have heard the arguments from both side.
7. Perused application, objections and case papers.
8. To decide this application following points are arises for my consideration;

P O I N T S

- 1) Whether the proposed respondents are necessary parties in this case?
 - 2) What order?
9. My answer to the above points are as follows:-

Point No.1: In the Affirmative

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

R E A S O N S

10. **Point No.1:-** The petitioner has filed this main petition under Order 34 Rule 5 of CPC., praying to pass final

decree and sale for suit schedule properties under Order 34 Rule 5 of CPC., for recovery of Rs.9,19,219/- with future interest at the rate of 6% per annum compounded yearly on principle amount of Rs.5,00,000/-. When the case was posted for taking steps at that time the applicants have filed this application praying to implead them as respondent No.5 to 7 as they are necessary parties in this case. The applicants have produced G-Tree of their family, on perusal of this document it goes shows that, the deceased Srinivasa S/o Late Venkataramaiah and the applicants are uterine brothers. Further the applicants have also filed certified copy of plaint in OS.No.1/2018 and certified copy of decree in OS.No.11/2014. On perusal of these documents it goes to shows that, the applicants and their mother Narasamma have filed suit for partition and separate possession with respect of this petition properties, after that the plaintiff has filed suit for recovery of money against the deceased Srinivasa in OS.No.1/2018 before this Court on 02.01.2018. The applicants in their Affidavit they have stated that, the suit schedule properties are undivided Hindu joint family properties of applicants and deceased Srinivasa, eventhough the Srinivasa has executed mortgage deed in favour of petitioner on 13.01.2016 and raised loan of Rs.5,00,000/- of the alleged mortgage deed, now the applicants have contended that this decree cannot executable as the Srinivasa has no absolute right over the petition schedule properties. To decide all these facts the proposed applicants are necessary parties in this case. If this application is allowed the dispute with regard to the suit properties can be decide, on

the other hand if this application is rejected definitely the applicants will be put in hardship. Thus, holding that the applicants are necessary parties in this case. **Hence, I have answered point No.1 in the Affirmative.**

11. **Point No.2:-** in view of various reasons and discussions made on point No.1, I proceed to pass the following;

ORDER

IA.No.5 filed by the applicants/proposed respondent No.5 to 7 under Order 1 Rule 10 (2) R/w Section 151 of CPC., is hereby allowed.

The applicants are impleaded as respondent No.5 to 7 in this case.

The Advocate for petitioner is directed to amend the petition on or before the next date of hearing.

No order as to cost.

(Dictated to the Stenographer, typed by him and corrected, signed and then pronounced by me in the Open Court on this the 16th day of September, 2025).

(SATISH S.T.)

Senior Civil Judge & JMFC.,
C.N Halli.