

**IN THE COURT OF PRINCIPAL CIVIL JUDGE & JMFC
AT CHIKKANAYAKANAHALLI**

Present: Smt.Aparna.R, B.Com, LLB
Prl. Civil Judge & JMFC

Dated this 13th Day of October, 2025

O. S. No. 51/2016

PLAINTIFF : Thammaiah

- Vs -

DEFENDANTS : Siddappa & others

I.A.No.21

APPLICANT : Nagarathnamma

- Vs -

OPPONENT : Thammaiah

PREAMBLE

<i>i</i>	<i>Provision under which the application is filed</i>	<i>Under Order I Rule 10(2) R/W Section 151 of CPC</i>
<i>ii</i>	<i>Relief sought for</i>	<i>Addition of party</i>
<i>iii</i>	<i>Date on which the application is filed</i>	<i>03/09/2025</i>
<i>iv</i>	<i>Number of the application</i>	<i>IA No.21</i>
<i>v</i>	<i>Date on which objections are filed by different opponents</i>	<i>11/09/2025</i>
<i>vi</i>	<i>Date on which orders were passed on the said application.</i>	<i>13/10/2025</i>

ORDERS ON I.A. No.21

The applicant has filed this application under Order I Rule 10(2) of CPC praying to implead her as Defendant No.7 in the suit.

1. In the affidavit annexed to this application, the applicant contends that this suit is filed by her husband seeking relief of partition, that the Item No.1 suit property is the self acquired property of plaintiff's mother-in-law Ballamma who purchased it under registered sale deed dated 13/03/1978 and thereafter during her lifetime has bequeathed the same to this applicant under Will dated 12/10/2006. That the said Ballamma died on 29/04/2007 and thereafter this applicant filed P & SC No.10006/2017 seeking probate of the said Will before the V AD & SJ, Tiptur, which was allowed and probate was granted to the said Will. That the plaintiff along with the defendants have colluded with each other and have filed this suit including the Item No.1 property. That the plaintiff and this applicant face matrimonial issues in 2015 for which this applicant had preferred a maintenance petition against the plaintiff

in Bangalore and due to this, the plaintiff by colluding with defendants have filed this suit. However after resolving the issues, the plaintiff executed GPA in favour of applicant to give evidence in this case before this Court, however the this applicant was not aware of any facts of the case and not knowing of Item No.1 property being included in this suit, has deposed in favour of plaintiff. However after knowing the said fact, the plaintiff has revoked the GPA. That in order to adjudicate the suit effectively, the applicant prays to add her as Defendant No.7 and prays to allow the application.

2. Per contra, the application is resisted by the Lrs of Defendant No.1 contending that this applicant being the wife of plaintiff has deposed as GPA holder of plaintiff and has given evidence in favour of the plaintiff and has also been subjected to cross examination. That post the chief evidence of defendant, an application U/o 23 Rule 1 CPC came to be filed by the plaintiff which came to be dismissed on 08/01/2025 and subsequently a memo was filed by applicant to dismiss the suit as not pressed,

which was also dismissed upon hearing. That the case is of the year 2016 and 9 years have lapsed and in order to protract the proceedings, the plaintiff and this applicant by colluding with each other, in order to harass the Lr of Defendant No.1 has filed this instant application, that the applicant is not at all the necessary or proper party to this suit and hence prays to dismiss the application.

3. Upon hearing both sides and on perusal of materials available on record, the point that arises for the consideration of this Court is ***whether the applicant is a necessary party to this suit?***

4. This Court answered the aforesaid point in the ***Affirmative*** for the following:

REASONS

5. The Plaintiff has filed this suit seeking relief of partition in respect of 6 suit properties claiming 1/5th share. Although the suit is filed by the plaintiff himself, he executed GPA in favour of his wife Nagarathanamma and authorized her to give evidence on his

behalf and accordingly on 06/11/2019, 24/10/2024, the GPA holder was examined as PW1 and she led her chief evidence and was also cross examined on 30/10/2024. Now this application is preferred by this GPA holder of plaintiff Nagarathnamma herself, contending that Item No.1 property has been bequeathed to her by her mother-in-law vide Will dated 12/10/2006 and despite having knowledge of this fact, the plaintiff has filed this suit seeking partition in the said property as well. Pertinently, on perusal of order sheet, it is forthcoming that on 26/03/2025, the plaintiff filed application for revocation of GPA along with revocation of POA, which was resisted by LR of Defendant No.1 and after hearing, my predecessor-in-office passed orders allowing the said application in part, thereby permitting the plaintiff to revoke the GPA but held that the acts of PW1 would bind the plaintiff.

6. It is evident that the plaintiff and applicant herein have conflicting interest in the suit in respect of Item No.1 suit property. Although this applicant has deposed in favour of PW1 earlier in the capacity of the plaintiff's GPA holder, the same

would be relevant and binding on the plaintiff. However the applicant has claimed that Item No.1 property was bequeathed to her by her mother-in-law by virtue of Will, which is adverse to the right and claim of the plaintiff, which issue needs adjudication in this suit. In fact the applicant has also placed on record the copy of the said Will dated 12/10/2006, for which probate is also granted in P & SC No.10006/2017. When such being the case, this Court cannot ignore the claim of this applicant, which is substantial and prima facie genuine.

7. It is pertinent to state here that the plaintiff is the dominus litus in the suit filed by him and he has right to choose against whom he seeks relief. In the case on hand, this application is not resisted by the plaintiff, but by the LR of Defendant No.1, who technically has no power to choose the parties to the suit. The only option left to the parties opposing the claim of the plaintiff in the suit is to lay their defence and lead evidence on merits of the suit. Having observed so, the applicant having shown her prima facie claim over Item No.1 suit property, her rights are at stake in this

suit and in her absence, the suit cannot be adjudicated efficaciously and hence she is a necessary party to the suit. Accordingly, point for consideration is answered in the Affirmative, and this Court proceeds to pass the following,

ORDER

I.A.No.21 filed under Order I Rule

10(2) of CPC is hereby allowed. No order

as to costs.

(Directly typed by me onto the computer, perused, corrected and then pronounced by me in open Court this 13th Day of October, 2025)

sd/-

(Smt.Aparna.R)

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