

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

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

Dated this 16th Day of July, 2024

O. S. No. 128 / 2023

PLAINTIFF : **Shivamma**
W/o Somashekar,
Aged about 36 years,
R/o Doddaramapura Majurae,
Gollarahatti Village,
Kandikere Hobli,
Chikkanayakanahalli Taluk,
Tumkuru District.

- Vs -

DEFENDANT : **Chandrashekara**
S/o Appanna,
Aged about 38 years,
R/o Doddaramapura Majurae,
Gollarahatti Village,
Kandikere Hobli,
Chikkanayakanahalli Taluk,
Tumkuru District.

I.A.No.7

APPLICANT : Rahul minor represented by
N/F K.Shashikala
- Vs -
OPPONENT : Shivamma

PREAMBLE

i	<i>Provision under which the application is filed</i>	<i>Under Order I Rule 10(2) R/W Section 151 of CPC</i>
ii	<i>Relief sought for</i>	<i>Addition of party</i>
iii	<i>Date on which the application is filed</i>	<i>19/03/2024</i>
iv	<i>Number of the application</i>	<i>IA No.7</i>
v	<i>Date on which objections are filed by different opponents</i>	<i>23/04/2024</i>
vi	<i>Date on which orders were passed on the said application.</i>	<i>16/07/2024</i>

ORDERS ON I.A. No.7

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

1. In the affidavit annexed to this application, the applicant is represented by his next friend, mother, who contends that the defendant is her husband and brother of plaintiff. That his whereabouts are not known for the past 6 to 7 years and despite having knowledge of this fact, the plaintiff has field this suit without arraigning her son as party to this suit. Since the applicant, minor son

is also a coparcener, even he is a necessary party to the suit and hence prays to allow the application.

3. Per contra, the plaintiff has filed objections resisting the said application contending that the defendant is enjoying the fruits of the suit property and that this application is baseless and vexatious, filed only to protract the proceedings and that no valid grounds are made out to allow the application and that he is not a necessary party to the suit and hence prays to dismiss the application.

4. 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?***

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

REASONS

6. The Plaintiff has filed this suit seeking relief of partition and separate possession in the suit properties contending to be the ancestral properties in which the plaintiff claims $\frac{1}{2}$ share. The

plaintiff and defendant are the children of deceased Appanna and Jayamma. The applicant herein is the minor son of the defendant. It is claimed by the applicant that the whereabouts of Defendant is not known for 6-7 years. However the plaintiff has neither denied the relationship of the applicant nor the factum of the Defendant having gone missing. The only ground raised by the plaintiff is that the application is baseless, not coupled with documents and filed only to protract the suit. When such being the case, this Court opines that an opportunity should be given to the applicant to put forth his case. Whether the applicant is entitled to share in the suit properties or not is a matter of trial. At this stage, this Court opines that the applicant is a necessary party to the suit and hence this Court answers the Point in ***Affirmative*** and proceeds to pass the following:

ORDER

***I.A.No.7 filed by the applicant 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 16th Day of July, 2024)

**Sd/-
(Smt.Aparna.R)
Addl. Civil Judge & JMFC, C.N.Halli.**

**[ORDER PRONOUNCED IN
OPEN COURT VIDE
SEPARATE SHEET]**

*I.A.No.7 filed by the
applicant under Order I Rule
10(2) of CPC is hereby allowed.
No order as to costs.*

ACJ & JMFC, C.N.Halli