



**IN THE COURT OF ADDL. SENIOR CIVIL JUDGE & JMFC.,
GUBBI.**

PRESENT:

SMT. POORNIMA .K. YADAV, B.A.LL.B., LL.M.,

Addl. Sr. Civil Judge & JMFC, Gubbi.

Dated on this the 1st day of September, 2023

ORIGINAL SUIT NO. 164/2021

Plaintiff/s : Smt. Hemavathi
D/o Late Ganganna
Aged about 30 years,
R/at Thorehalli,
Kasaba Hobli,
Gubbi Taluk,
Tumkur District.

(By Sri C.S.A., Adv.)

Vs.

Defendant/s: 1. Smt. Kempamma
W/o Late Ganganna,
Aged about 63 Years,

2. Sri Dayananda
S/o Late Ganganna
Aged about 35 years,

D1 and 2 are
R/at Thorehalli,
Kasaba Hobli,
Gubbi Taluk,
Tumkur District.



3. Smt. Padmavathi,
D/o Late Ganganna,
Aged about 48 years,
R/at Donkihalli,
Dandinashivara Hobli,
Turuvekere Taluk,
Tumkur District.
4. Smt. Manjula,
D/o Late Ganganna,
Aged about 36 years,
R/at C.S. Pura,
Gubbi Taluk,
Tumkur District.
5. Sri Thimmanna,
S/o Late Rangaiah,
Aged about 62 years,
R/at Thorehalli,
Kasaba Hobli,
Gubbi Taluk,
Tumkur District.

(D1 &3 By Sri B.R.S. Adv.)
(D2 By Sri B.S. Adv.)
(D4 By Sri R.V. Adv.)
(D5 Exparte)

PARTIES TO I.A.NO.VI

Applicant/defendant :Smt. Hemavathi

Vs.

Opponent/plaintiff : Smt. Kempamma and others



Provision under the Application	Under Order 1 Rule 10 (2) of CPC
Application Relief sought for	To implead the proposed defendant No. 6.
The date of the application is filed	15.11.2021
Number of Application	VI
Date of objection filed by the defendants	24.02.2022
Date of orders passed	01.09.2023

Sd/-
(POORNIMA K. YADAV)
Addl. Senior Civil Judge &
JMFC, Gubbi.

ORDERS ON IA NO.VI

When the matter was pending for further Cross examination of PW1, the plaintiff filed the present application.

The plaintiff through her counsel filed this application U/O 1 Rule 10 of CPC seeking to be implead the proposed defendant as defendants No.6.

2. The application is accompanied with the affidavit of the of the plaintiff wherein it is stated that the present suit is filed seeking relief of partition and separate possession of the



plaintiff's 1/5th share in suit schedule properties. It is further stated that that the defendant No.2 in the written statement contended about alienation of lands bearing Sy No.13/2 measuring 16 guntas and Sy No 14/9 measuring 21 guntas in favour of the husband of proposed defendant. After enquiry the plaintiff came to know that the husband of the proposed defendant is dead and the Khatha Pahani of item No.5 of the suit schedule property is transferred in the name of the proposed defendant on Powthi varasu as such she is the necessary party. Hence, sought to allow the application.

- 3.** After filing of the application, notice was issued to the proposed defendant. The proposed defendant appeared through counsel and filed objection to the application.
- 4.** The proposed defendant contended that the application is not maintainable and it is liable to be rejected. It is contended that the husband of the proposed defendant purchased lands bearing Sy No 14/9 measuring 21 guntas, Sy No.13/2 measuring 16 guntas under registered sale deed dated 23.10.2001 and 20 years have elapsed since the date of



transaction as such the present application is not maintainable. It is contended that since 2001 the proposed defendant and her husband are in possession and enjoyment of the said properties. Hence, sought to reject the application.

5. Heard both the counsel for the plaintiff and proposed defendant No. 6.
6. Upon hearing and based upon materials available on record, the point that arise for my consideration is:

**Whether the proposed defendant No.6
is necessary party for adjudication of
the matter in dispute ?**

7. My finding to the above point is in the '**Negative**' for the following :

REASONS

8. Admittedly, this suit is filed seeking relief of Partition and separate possession of 1/5th share of the plaintiff in item No.1 to 3 of the suit schedule properties i.e land bearing Sy



No.6/2 measuring 1.07.04.00 guntas, Sy No.5/3 measuring 4 acre 37 guntas and Sy No.59/3 measuring 38 guntas.

9. The present application is filed on the basis of the written statement filed by the defendant No.2 contended that land bearing Sy. No.14/9 measuring 21 guntas and Sy No.13/2 measuring 16 guntas are sold to the husband of the proposed defendant.
10. On perusal of the written statement filed by the defendant No.2 who is the brother of the plaintiff, it is contended that the plaintiff has not included Sy. No.14/9 measuring 21 guntas and Sy No.13/2 measuring 16 guntas which were sold by the father of defendant No.1 for the marriage purpose of defendant No.4.
11. The objection filed by the proposed defendant to the application shows that the husband of the proposed defendant purchased the said properties on 23.10.2001.
12. The said materials on record discloses that the sale deed of



the proposed defendant is dated 23.10.2001. The properties sold under the said instruments are not the suit schedule properties. However the plaintiff has filed IA No.7 to include the said properties on the ground that they are the ancestral and joint family properties. The plaintiff failed to explain about the origin of the said properties. That a part as per proviso to Sec.6 of the Hindu Succession Act, 1956 there is clear bar to question the disposition that has taken place on or before 20.12.2004. The sale deed in the name of the husband of proposed defendant is dated 23.10.2001. This shows that the alienation is prior to 20.12.2004 which is protected under the afore mentioned provision. In the said circumstances the proposed defendant is not the necessary party for adjudication of mattering dispute. Accordingly, I proceed to pass the following :

ORDER

***I.A. No.VI filed by the
plaintiff under Order 1 Rule 10***



of CPC is hereby rejected.

***Parties to bear their own
costs.***

*(Dictated to the Stenographer directly on computer, typed by
her, corrected and then pronounced in the open court on this
the **1st day of September, 2023**)*

Sd/-
(POORNIMA. K. YADAV)
Addl. Sr. Civil Judge & JMFC,
Gubbi.