

ORDER ON APPLCIATION FILED
UNDER ORDER 1 RULE 10(2) OF CPC

This is an application filed by applicants by name Lakshmi D/o Goravaiah and Manikanta S/o Goravaiah have filed this application to implead them as additional defendants in this case as they are proper and necessary parties to this proceedings.

2. In the affidavit accompanying this application applicants have stated that they are the children of 1st defendant and suit schedule property is ancestral and joint family property. It is further stated that they also having legitimate share in suit schedule property and if this application is allowed, no harm would be caused to other side and if application is not allowed, applicants will be put to hardship and injury which cannot be compensated in terms of money. Hence they prayed to allow this application and to implead them as additional defendants in this case.

3. On the other hand plaintiff has filed objection contending that, applicants are not necessary parties or proper parties to this suit. Plaintiff further contends

that proposed defendants are son and daughter of 2nd wife of 1st defendant Goravaiah. It is further stated that, during the lifetime of 1st wife 2nd marriage is void and therefore proposed defendants born out of void marriage and are not entitled to any share in suit schedule property and they are not necessary parties to this suit. Hence he prays to dismiss the application.

4. Heard arguments on both sides and perused records.

5. The points that arise for my consideration are;

1) Whether applicants are proper and necessary parties in this suit?

2) What order ?

6. My answer to above points are as under;

Point No.1- Affirmative

Point No.2- As per final order for the following;

REASONS

7. **Point No.1-** Admittedly this is a suit filed by plaintiff against defendants for relief of partition and separate possession of suit schedule property. It is the case of plaintiff that she is daughter and 3rd defendant

is son of defendant No.1 and 2 and suit schedule property is ancestral and joint family property of plaintiff and defendants. Applicants have come up with this application to implead them as necessary parties in this suit. According to applicants they are the children of 1st defendant Goravaiah. According to applicants they are proper and necessary parties in this suit as such, they are to be impleaded in this suit as additional defendants.

On the other hand it is the contention of plaintiff that applicants are daughter and son of 2nd wife of Goravaiah i.e., 1st defendant. It is further contention of plaintiff that during the life time of 1st wife 2nd marriage is void in law therefore, proposed defendants born out of void marriage and not entitled for any share in suit schedule property. Even according to plaintiff the applicants are son and daughter of 2nd wife of 1st defendant Gorvaiah. At this stage whether the applicants are legitimate children of 1st defendant or not cannot be decided. Now court is to be seen whether applicants are necessary parties in this suit.

Considering the nature of relief brought for by the plaintiff and the contention of applicants, I am of the opinion that applicants are necessary parties and their presence in this case is necessary in order to enable the court to effectively and completely adjudicate upon all the questions involved in the suit. More over, if the applicants are come on record no injuries would be caused to either side therefore, I answer this point in Affirmative.

8. Point No. 2- In view of above discussion I proceed to pass the following;

ORDER

Application filed by applicants under order 1 Rule 10(2) of CPC is hereby allowed.

Applicants are permitted to come on record as additional defendants in this suit.

Plaintiff is directed to carryout the amendment by impleading the name of applicants as additional defendants in cause title of plaint and to file amended plaint.

Prl. Civil Judge & JMFC.,
Gubbi.

