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O.S.NO.367/2023

IN THE COURT OF PRL CIVIL JUDGE AND JMFC.,
KUNIGAL

Present:

Smt Sujatha A.B., B.A.L., L.L.B.,

Prl Civil Judge & JMFC., Kunigal.

Dated this the 17th day of March 2025

O.S.No.367/2023

Plaintiff : Mariyappa and others

V/s

Defendants : Gangadhara and another

I.	Provision under which the application is filed	Under Order I Rule 10(2)
II.	Relief sought for	Permit the applicant to implead additional defendant No.7 in this suit.
III.	The date on which the application is filed	12.12.2023
IV.	Number of the application	1
V.	The date on which the objections are filed by	23.01.2024
VI.	The date on which the order were passed on the said application	17.03.2025

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O.S.NO.367/2023

I.A.No. I

Applicant/plaintiff:

Mariyappa and others

V/s

Opponents/ proposed defendant:

Gangadhara and another

**ORDER ON APPLICATION FILED BY THE
PLAINTIFF UNDER ORDER 1 RULE 10(2) OF CPC**

The proposed defendant No.3 and 4 have filed this application to implead them as additional defendant No.3 and 4 in the suit.

2. In the affidavit annexed along with the application the proposed defendant No.3 has contended that, the plaintiff has filed this suit against the defendant No.1 and 2 for partition and such other relief in collusion with defendant No.1. He has contended that my grandfather by name Huchaiah @ Huchegowda had 3 children, namely 1)H.Marigowda, 2) Mariyappa who is plaintiff No.1 3) H.Byrappa who is



plaintiff No.3. He and applicant No.2 are the grandsons of said late H.Marigowda, the said late H.Marigowda had 2 sons namely Gangadhara H.M (who is defendant No.1 and my father) and Ramakrishana who is plaintiff No.5. He contended that, my father who is defendant No.1 has deserted his wife who is defendant No.2 and 2 children namely he and applicant No.2 even though he has residing with us, he totally neglected us. So, such being this he and applicant No.2 had approached the plaintiffs and defendant No.1 in the year 2022 December and requested them to let out legitimate share in the suit schedule property and other left Huchaiah @ Huchegowda. But, the plaintiff and defendant No.1 has refused to allot our legitimate share and further after the refusal of our legitimate share the plaintiff and defendant No.1 have collectively filed this suit behind our back in order to obtain collusive decree in respect of suit schedule property and deprive the our



right over the suit schedule properties and other properties which are not included.

3. It is contended that, the land bearing Sy.No.89/1 measuring 3 acre 9 guntas, land bearing Sy.No.39/5A measuring 2 acre 24 guntas, land bearing Sy.No.55/1A measuring 2 acre 6 guntas, land bearing Sy.No.5/2 measuring 20 guntas, land bearing Sy.No.97/1C measuring 1 acre 3 guntas, land bearing Sy.No.44/P4 measuring 4 acres , land bearing Sy.No.52/3 measuring 04 guntas, land bearing Sy.No.60/4 measuring 32 guntas, land bearing Sy.No.57/8 measuring 25 guntas, land bearing Sy.No.75/1A measuring 14 guntas land bearing Sy.No.55/1B measuring 36 guntas, land bearing Sy.No.12/1 measuring 1 acre 23 guntas and land bearing Sy.No.75/C measuring 09 guntas all the Yedigere Village, Yediyuru Hobli, Kunigla Taluk are also ancestral , undivided properties of proposed defendants and the plaintiff No.1,3 and 5 but, the



plaintiff's did not included the above said properties in the plaint with intentionally and also not whispered anything about the above said properties in order to defraud their legitimate share over the suit schedule properties and other properties. Hence it is necessary to implead proposed defendant as defendant No.3 and 4 in this suit. Hence prayed to allow the application.

4. On the other hand the plaintiff has filed objection and in the same, she contended that proposed defendants have filed this application without mentioning proper and valid reason and they have not furnished any document in support of their application and parents of the proposed defendant are already on record as defendants and without partition between plaintiffs and defendant No.1 that too during the lifetime of the defendant No.1, his children are not necessary parties to the suit. The proposed defendants filed this application on instigation of defendants to drag on the proceedings. Among these grounds



plaintiff prayed for reject of the application.

5. Heard arguments.

6. In light of the above contentions, the infra points that would arise for my consideration.

1. Whether the proposed defendants are proper and necessary party for full and effectual adjudication of the matter involved in this suit?

2. What order?

7. My findings on the above points are as under:

Point No.1: In the ***Affirmative,***

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

::REASONS::

8. **Point No.1::** The plaintiffs have filed the present suit for the relief of partition. According to proposed defendants they are the children of defendant No.1 and 2 and defendant No.1 has



deserted his wife who is defendant No.2 and neglected the proposed defendants and since when they have approached the defendant No.1 and plaintiffs to effect the partition but same was refused by them and hence they are having share over the suit schedule properties.

9. It is noted that the plaintiffs have not denied the relationship between them and with the proposed defendants. Furthermore, the proposed defendants also having share in the suit schedule properties and their claim cannot be ruled out and if the present application is rejected then they have to file fresh suit, which leads to multiplicity of proceedings.

10. Hence in order to clarify and to determine the real crux of the issue, at this stage this Court is of the opinion that though the proposed defendants are not necessary party, they may be proper party in order to aware of the proceedings of this case. Further, if the proposed defendants are impleaded, it will not



prejudice the rights of the plaintiffs and at the same time, if the same is rejected, certainly the proposed defendants will put to hardship and injury and they have to file separate suit to claim their right. Hence the proposed defendants are proper parties. Hence this court inclined to allow the application. Hence, point No.1 is answered in the ***Affirmative.***

11. **Point No.2::** For the above discussed reasons, this court proceeds to pass the following:

:ORDER::

I.A.No.I filed by the proposed defendants under order 1 Rule 10 of C.P.C., is hereby allowed on cost of Rs.200/-.

The proposed defendant No.3 and 4 are brought on record as defendant No.3 and 4 .

The plaintiff is directed to

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amend the cause title and to file
amended plaint.

[Dictated to the stenographer directly on computer and then corrected by me and thereafter pronounced in the open court on this the **17th day of March, 2025**]

[Sujatha A.B.]
Prl. Civil Judge and JMFC,
Kunigal.