

**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC, AT
PAVAGADA.**

Dated this the 26th day of April 2018.

Present :
Sri. Bharath Yogeesh Karagudari, BAL, LLB,
Prl. Civil Judge & JMFC,
PAVAGADA.

ORIGINAL SUIT No. 115 / 2016.

Plaintiff/s : Kariyanna S/o Late Sannappa,
Aged about 40 years,
R/o Devarayana Roppa village,
Nidagal hobali, Pavagada Taluk.

(By pleader Sri.DPR, Adv.)

/VS/

Defendants/s : 1. S. Thippeswamy S/o Late Sannappa,
Aged about 68 years.

2. Nagappa S/o Late Kenchappa,
Aged about 55 years.

3. Eranna S/o Kenchappa,
Aged about 50 years.

All are R/o Devarayana Roppa village,
Nidagal hobali, Pavagada Taluk.

(By pleader Sri.RV, Adv., for D1 to 3)

I.A. No. V

Applicants : 1. Gundappa S/o Late Maranna
Aged about 46 years.
2. Mahesh S/o 1st applicant Gundappa.
Aged about 24 years.
3. Shiva Prasad S/o 1st applicant Gundappa.
Aged about 19 years. (Defendants)

All are R/o Devarayana Roppa village,
Nidagal hobali, Pavagada Taluk.

/Vs/

Opponent : Kariyanna (Plaintiff)

ORDER ON I.A. V filed Under Order, I Rule 10(2) of CPC

This instant application is filed by the applicant No.1. Gundappa S/o Late Maranna, 2. Mahesh S/o 1st applicant Gundappa. 3. Shiva Prasad S/o 1st applicant Gundappa, under order I Rule 10(2) of C.P.C, praying to implead these applicants as the defendant No.4 to 6 in this suit.

2. The application is supported with the affidavit duly sworn to by the applicant, who contends that the plaintiff has filed a suit against defendants for partition and separate possession against the defendants.

The applicants of this I.A submit that their father and the plaintiff's father were brothers and they form undivided joint Hindu family. Now the plaintiffs have filed this suit by avoiding them. Since they become

part of the joint family, they are necessary and proper party to the suit and his presence is very necessary to decide the matter in question properly and fairly. Therefore they have filed this application to implead them as parties to the suit and opportunity to be granted to them to contest the case.

3. Per contra, the learned counsel for the plaintiff has filed his objections to the application contending the applicants are strangers and they have no right title interest in the suit schedule properties. Furthermore it is averred that the plaintiff's father has purchased the suit property. Hence the applicants have no semblance of right over the suit schedule property. The statement of the applicant clearly shows that the claim of applicant is prima-facie false, unsustainable and misleading and in the circumstance the claim of the applicant to come on record as additional defendant in the above suit is not at all sustainable. Hence the applicant is not entitled for relief claimed in the I.A. filed by him. In these circumstances the impleading applicant is unnecessarily interfering with the rights of the plaintiff and his possession. The applicant has got no locus standi and semblance of rights in respect of suit schedule property. Upon all these count prays to dismiss the application.

4. Heard arguments on both sides perused the records.

5. The following points arise for my consideration.

1. Whether applicant proves that his presence in the suit is just and necessary for effective and complete adjudication of the suit?
2. What order?

6. My answers to the above points are as under:

Point No.1 –In the affirmative,

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

REASONS

7. Point No.1 : Both the learned counsel for plaintiff and defendants have reiterated what is stated by them in their respective application and objections thereto. I have gone through the entire records of the case. This suit is filed by the plaintiff for partition and separate possession against the defendants. The applicants claim that they are the part of the joint family of the plaintiff and defendants, per contra the plaintiff deny it by urging that they are the strangers.

8. In order to substantiate the plea the applicant has produced G tree wherein it is enumerated that one Honnurappa had two wives named Mallamma and Siddamma. Mallamma had one son named Sannappa who is the father of the plaintiff and Siddamma had one son named Kenchappa the applicant are the lineal descendants of the said Kenchappa. Therefore, as per the G tree produced by the applicants it is apparent that they form joint family along with the plaintiff and defendants. Further, the applicants also have filed one partition deed dt: 17-08-2007, the verbatim of the said discloses that it was executed between the plaintiffs, defendants and the applicants. The plaintiff contends that the documents produced by the applicants are concocted and fabricated. Thus, from the above narrated documents prima facie it can be arrived to the conclusion that the applicants,

plaintiff and defendants are the descendant of Honnurappa. Therefore there is no impediment to hold them as members of the same family. The plaintiff claim that the suit properties are ancestral properties, since the suit is for partition all the coparceners should be made as party as they are the necessary and property to adjudicate the case. It is evident from the G tree that the applicants are the coparceners in the family of the plaintiff and defendant. Therefore, in my view they are necessary and proper party to the suit for effective and complete adjudication of the suit. Under the circumstances I hold the **point No.1 in the affirmative.**

9. Point No.2: For the reasons stated and findings given to point No.1, I proceed to pass the following.

ORDER

I.A. No. V filed by the applicants U/O I Rule 10(2) CPC is hereby allowed with costs.

The plaintiff is hereby directed to implead the applicants as defendant No.4 to 6 and carry out the necessary amendment forthwith

For furnishing of amendment plaint on 22-06-2018.

(Directly dictated to the Stenographer on computer and print out taken by him, and then corrected and pronounced by me in the open Court on this the 26th day of April 2018).

Prl. Civil Judge & JMFC,
Pavagada.