

ORDERS ON I.A.No:XI

The applicants have filed the I.A.No.XI under Order I Rule 10 r/w Section 151 of CPC seeking permission to implead them as additional defendants.

2. Plaintiff and defendant Nos.1 and 7 have filed their respective objections and sought for dismissal of the application in question.

3. Heard the arguments on I.A.No.XI. I have gone through the materials available on record. The following points arise for my determination.

POINT No.1: Whether the applicants/ proposed defendants have made out a case so as to allow I.A.No.XI filed Under Order I Rule 10(2) C.P.C.?

POINT No.2 : What Order?

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

POINT No.1 : IN THE AFFIRMATIVE.

POINT No.2 : As per the order below for the following;

REASONS

5. **POINT No.1:** The present suit is filed by the plaintiff against the defendants for the relief of partition and separate possession and the matter is posted for further evidence of defendant Nos. 1 to 3, the instant application is filed by the applicants. In support of the said application in question, the applicant No.2 has filed affidavit contending that the properties involved in the present suit are the ancestral properties belonging to deceased Soiru S/o. Rama Bhandari Kalgutkar. That applicants Nos. 1 to 3 are the sons and 3 and 4 are the daughters of Shivaram Haldankar and that the applicant No.5 is the son-in-law of respondent No.1. It is further contended that the deceased Soiru Bhandari has purchased the item Nos. 2 to 5 of the suit properties and item No.1 is the Mulageni property

and the above said Soiru S/o. Rama Bhandari @ Kalgutkar married to Shevanthi Rama Bhandari @ Kalgutkar and that the applicants are the legal heirs of said Soiru S/o. Rama Bhandari @ Kalgutkar. The said Soiru S/o. Rama Bhandari @ Kalgutkar had executed Will in favour his only brother namely Shri. Ira @ Hiru S/o. Rama Kalgutkar in respect of the above said properties to an extent of half portion and he retained the remaining half portion. It is further contended that the above said Soiru S/o. Rama Bhandari @ Kalgutkar died on 13/03/1940 leaving behind his last Will and Testament bequeathing his half share in the suit properties and that the remaining half portion in the said land were continued in the name of Late Soiru and after his death the applicants being the only legal heirs have acquired right and interest as per right of inheritance in respect of half portion in the suit properties left behind by him. It is further contended that the said Ira @ Hiru Rama Kalgutkar died on 05-07-1983 and the lands were mutated in the name of his wife namely Smt. Savithri W/o. Ira Kalgutkar. It is further contended that the above said Ira @ Hiru Rama Kalgutkar is owner in respect only his half share in the suit properties but not to the entire properties. On the other hand, applicants herein are entitled for the share in the suit properties. By taking undue

advantage of the Will the predecessor in interest of the plaintiff effected their names in the Revenue Records in respect of entire suit properties instead of half portion as per the above said Will. Now, they have filed the present suit behind the back and without the knowledge of the applicants. Hence, they filed with this application and sought for impleading them as additional defendants.

6. Plaintiff in her objection statement contended that the application is false, frivolous and not tenable under law and the applicants are neither proper party nor necessary party as they have know semblance of right, title and interest in the suit properties. The applicants have filed the present application at the belated stage and if the application is allowed, certainly it will lead to denova trial and the applicants have filed a separate suit in O.S.No.190/2018 for the relief of partition and they can seek their remedy in the said suit as such present application in question not maintainable and he sought for dismissal of the application in question.

7. On the other hand, defendant Nos. 1 and 7 filed their separate objections contending that the right, title if any of the applicants cannot be

adjudicated in this case and the remedy lies in filing this separate suit and that the applicants are not entitled for the relief sought in the IA as they have slept over their right and their share and right in the property are false and denied. On the other hand. Defendant No.7 also sought for dismissal of the application in question.

8. Order I Rule 10(2) CPC confers power on the Court to add or delete any party as a defendant or as a plaintiff if it appears to the Court that it is just and necessary to do so to adjudicate upon the matter in dispute effectually and completely. It is pertinent to state here that the already stated supra this is a suit filed by the plaintiff for the relief of partition and separate possession. The applicants contending that the suit properties are originally owned by Late Soiru S/o. Rama Bhandari @ Kalgutkar and the applicants are claiming to be the legal heirs of Soiru S/o. Rama Bhandari @ Kalgutkar and also claiming that they are also entitled for share in the suit properties. The plaintiff has not denied that the said Soiru S/o. Rama Bhandari @ Kalgutkar is the brother of Ira @ Hira Rama Kalgutkar and also not denied that the applicants are the legal heirs of said Soiru S/o. Rama Bhandari @

Kalgutkar. Though the plaintiff and defendant Nos. 1 and 7 contended that the present application is not maintainable, they have not disputed the nature of suit property and relationship between the applicants and parties to the suit in their objection statements.

9. It is well established principle of law is that, in a suit for a partition all legal heirs/ co-owners having right and interest over the suit properties shall be impleaded as parties to the suit and in the absence of necessary in a suit for partition court cannot pass effective order. On the other hand, in the absence of the necessary parties no effective decree could be passed at all by the court. Hence, just decision of the present suit proposed applicants shall impleaded as additional defendants to meet the ends of the justice and to adjudicate the matter effectively and also to avoid multiplicity of the proceedings

10. It is too early to reject the claim of the plaintiff to implead the proposed defendants without providing an opportunity to the applicants/proposed defendants to place their case on record. The plaintiff is at liberty to counter the case of the applicants by filing rejoinder and by leading the evidence in support of their contentions. In the

circumstances of the case it is just and necessary to allow I.A.No:XI in order to avoid multiplicity of the proceedings and to decide the matter on merits. Hence, it is relevant to implead the proposed defendants as additional defendants in the present suit. Hence, taking into consideration of the nature of the reliefs sought for the suit and having regard to the dispute between the parties to lis, I am of the opinion that no hardship or injury would be caused to the plaintiff. On the other hand the applicants/ proposed defendants will be put to great hardship in the event of dismissal of the application. Hence, I answer the Point No.1 in the **Affirmative**.

11. **POINT No.2:** In view of the findings given on Point No:1 I pass the following;

ORDER

The I.A.No.XI Under Order I rule 10(2) r/w Section 151 of CPC filed by the applicants to implead them as proposed defendants is hereby allowed subject to payment cost of Rs.1,000/-.

The plaintiff is directed to amend the plaint cause title and furnish amended plaint on the next date of hearing.

Call on 24-06-2023.

**Pri.Civil Judge and J.M.F.C-II,
Karwar**

