

KAUK210007402024



**IN THE COURT OF  
CIVIL JUDGE AND JMFC ANKOLA AT:UTTARA KANNADA**

Presided Over by **ARPITHA B BELLAD**  
B.Com., LL.B.,  
Addl. Civil Judge and J.M.F.C.,  
Ankola.

**ORIGINAL SUIT NO. 60/2024**  
**Dated this the 6<sup>th</sup> day of January, 2025**

**Plaintiffs:-**

- 1) Smt. Chandrabhagi W/o Buddu Naik,  
Age: 70 years,  
O/c: Household & Agriculturist,  
R/o: Nadibhag, Bobruwada, Ankola Tq.
- 2) Smt. Tulasi D/o Buddu Naik @ Bhavani  
W/o Nagesh Naik  
Age: 48 years,  
O/c: Household & Agriculturist,  
R/o: Maratikoppa, Sirsi U.K.

**[By: Sri. M.P.B., Advocate]**

V/s

**Defendant:-**

Rama Rummu Naik @ Rama Buddu Naik  
Age: 58 years,  
O/c: Coolie,  
R/o: Nadibhag, Bobruwada, Ankola Tq.

**[By: Sri.S.O.N., Advocate]**

i.	Provision under which the application is filed	O.I. Rule 10(2) R/W Section 151 of CPC
ii.	Relief sought for	Impleadment of proposed defendants
iii.	The date on which the application is filed by proposed defendants	07/11/2024
iv.	Number of the application	IA No.I
v.	The date on which the objections are filed by the plaintiffs	26/11/2024
vi	The date on which the hearing on the said application came to be concluded	13/12/2024
vi.	The date on which the orders were passed on the said application	06/01/2025

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### **ORDERS ON IA. I**

This order arises out of an application filed under Order I Rule 10(2) R/W Section 151 of CPC by the proposed defendants through their Counsel seeking permission to implead them as proposed defendant No.2 to 4.

**2.** An affidavit is accompanied with the said application sworn in by the proposed defendant by name Naveen Vinayak Naik wherein he stated that defendant of the present case is an adopted son of the plaintiff No.1 and she filed the instant

case seeking the relief of declaration that the defendant is not an adopted son and hence not entitled to share in the properties inherited by the now deceased Buddu Naik and if the said declaration is granted, the proposed defendants will be put into loss since they are entitled to claim right in respect of the lands. It is further stated that the plaint schedule Sl.No.1 landed property bearing Sy.No.174/1 is jointly owned by all coparceners of the joint family including proposed defendants and the plaintiffs and defendant of this case and names of all persons are appearing in the record of rights in respect of the land and no partition by metes and bounds has taken place as on today.

**3.** Further stated that the plaintiffs have filed the instant suit without admitting any partition by metes and bounds of the family properties, hence they are not entitled to claim any absolute ownership of lands which are in joint possession. The instant case even though made to appear as between plaintiffs and defendants, the same is collusive one as if the declaration sought by the plaintiffs if allowed will seriously affect the rights of proposed defendants, as such they are necessary parties to the suit to contest the claim of the plaintiffs for the reason that if the declaratory relief sought by the plaintiffs are allowed, it will result in diminishing the share in their joint family properties which are also stated by the plaintiffs in their pleadings. If the said application is allowed, no prejudice would said to have been caused to the

plaintiffs and on the other hand, if the said application is disallowed, the proposed defendants would be put into hardship which cannot be compensated in terms of money. Hence, sought to allow the said application.

**4.** Per contra, objections came to be filed on behalf of the Plaintiffs refuting the said application as not maintainable. The proposed defendants are not necessary and proper parties to the present case on hand and since the present case is in between the plaintiff and the defendant and the said case is filed seeking the relief of declaration that the defendant is not an adopted son of deceased Buddu Alu Naik and his wife and for rectification of revenue records, as such it does not bind on the proposed defendants.

**5.** It is further contended that the defendant marked his appearance before the Court through his counsel and thereafter, he has not filed any written statement but the proposed defendants have filed this type of application on behalf of the defendant stating that the defendant is an adopted son of deceased Buddu Aalu Naik and the plaintiffs have neither sought any claim against the proposed defendants nor pleaded against their claim, as such the proposed defendants are not at all necessary parties to the present suit for effective determination of the case. The said application is filed only to drag the proceedings since the plaintiff No.1 is aged about 70 years, as such the said suit

has to be decided during her life time. On all these grounds, prays to dismiss the said application with costs.

**6.** Heard the respective Counsels for plaintiffs and proposed defendants and perused the entire materials on record.

**7.** In view of the above, only point would arise for my consideration:

**1. Whether the application under order I rule 10(2) R/w Section 151 of CPC filed by the proposed defendants to implead them in the present suit deserves to be allowed?**

**2. What order ?**

**8.** My answers to the point no.1 is in the **Affirmative.**

### **REASONS**

**9. POINT NO.1 :** The present suit is filed by the plaintiffs seeking the relief of declaration to declare that only plaintiffs are entitled for the right in suit schedule properties since they are the only legal heirs of deceased Buddu Aalu Naik and for declaration to declare that defendant is not an adopted son of deceased Buddu and also sought for rectification of record of rights.

**10.** The plaintiffs have furnished gemology in plaint para No.2 which depicts that one by name Aalu had three sons by name Rummu, Krishna and Buddu. Plaintiffs are shown as legal heirs of deceased Buddu and the defendant is shown as legal heir of deceased Rummu. It is also shown that Rumma had three sons by name Sheshu, Vinayak and Rama who is the defendant. The proposed defendant No.3 and 4 are legal heirs of deceased Vinayak of branch of Rummu and proposed defendant No.1 is the legal heir of deceased Krishna.

**11.** The plaint averments disclose that the suit properties are joint family properties having been granted occupancy rights infavour of deceased Rummu, Krishna and Buddu by Land Tribunal and also item No.1 of the suit property is also joint family and it further reveals that three brothers got partitioned the suit properties among themselves on 30/06/2003 as per M.R.No.4/2003-04 and the suit properties have been in separate cultivation of the plaintiffs. Defendant is not an adopted son of deceased Buddu and plaintiff No.1, as such the plaintiffs alone are entitled for their rights in suit schedule properties.

**12.** Now the proposed defendants intends to come on record as necessary parties through the said application by contending that their interest is also involved in the suit schedule properties, since no partition has been effected by metes and bounds.

Let me go through the provision of **Order 1 Rule 10(2) of CPC** “*that is the name of any person who ought to have been joined, whether as plaintiff and defendant or whose presence is necessary before the court in order to enable the court effectually and completely adjudicate upon settled all the portion involved in the suit be added.*”

Sub-rule (2) of the Rule 10 empowers the court to add any person as a party to the suit on either of the two grounds –

- i) Such person ought to have been joined as a Plaintiff or a Defendant, and is not so joined; or
- ii) Without his presence, the question involved in the suit cannot be completely decided.

**13.** By reading of the above provision, it makes clear that, a necessary party is a one, in whose absence the court cannot pass an effective decree at all. Proper party is one whose presence before the court is necessary to ensure that, all matters in disputes are effectually or completely determined. The only reasons which makes it necessary to make a person a party to action is that, he should bound by the ensuring result and question should be settled in the suit. Therefore it must be one, which cannot be effectively settled unless he or she is the party to the suit.

**14.** In the present case, on reading of the entire pleadings, it clearly reveals that, suit properties are joint family properties having been granted with occupancy rights infavour of ancestors of plaintiffs and proposed defendants. It is also averred that there was a division of properties among the predecessor in interest of the plaintiffs and proposed defendants and the present suit is filed seeking a relief of declaration that only the plaintiffs are entitled for the rights in suit schedule properties and defendant being not an adopted son of deceased Buddu is not entitled to any right. However, the issue regarding adoption whether the defendant is an adopted son of deceased Buddu or not is the matter of trial, as such this Court is not going to touch the matter of an adoption while deciding the present application. However, the plaintiffs averred that the suit properties which were the joint family properties were divided among the predecessor in interest of plaintiffs and proposed defendants. However, there is no dispute in respect of relationship of the parties and the record of rights in respect of item No.1 of the suit schedule property is standing in joint names of plaintiffs and proposed defendants. A vital point to be noted here is that at one stretch, plaintiffs have taken a contention of prior partition but at the same time, on the other hand, they have sought for the declaration in respect of the entire right in suit properties. They have not sought for the declaration only to an extent of share of their branch but instead they have sought for declaration to an entire extent wherein the right, interest and

title of the proposed defendants are also included. Whether there was a partition or not requires full pledge trial. No doubt the plaintiffs have not claimed any relief against the proposed defendants but they have sought for the declaration of their rights in respect of entire extent in which the proposed defendants are also having right and interest, as such the plaintiffs alone cannot claim a relief of declaration to an entire extent in respect of joint family properties without impleading the other coparceners. When the proposed defendants are having right over the suit property, then it is just and proper to implead them in the present case on hand for effective determination of the case. If in case, the plaintiffs obtains a declaratory relief in respect of the entire property, then the rights of the proposed defendants will be infringed. The matter would be different if the plaintiffs have sought for declaration only to an extent of their share belonging to their branch but they have sought for declaration in respect of entire property. Under such circumstances, in my opinion, the proposed defendants also becomes necessary parties to the case in hand.

**15.** The purpose of Order I Rule 10(2) of CPC is to bring before the court, at the same time, all the persons interested in the dispute so that the dispute may be finally determined at the same time in the presence of all the parties without the delay, inconvenience and expense of several actions and trials and inconclusive adjudications. This provision, thus, confers

wide discretion on the court to meet with every case of defect of parties and is not affected by the inaction of the Plaintiff to bring the necessary parties on record.

**16.** In the present case on hand, the proposed defendants becomes the necessary parties and if they are impleaded in the present suit, then all the issues relating to the suit properties and an issue of adoption can effectively be determined by this Court and also in order to avoid multiplicity of proceedings and to safeguard the interest of these proposed defendants, I am of an opinion that it is just and proper to add the proposed defendants in the present case on hand for effective determination of the suit as well as in order to resolve all the disputes that arisen among the parties. With these observations, Point No.1 is answered in **Affirmative.**

**17. POINT NO.2 –** For the foregoing reasons, **this Court proceeds to pass the following -**

**ORDER**

**The I.A. No.I filed by the proposed defendants under order I rule 10(2) R/W Section 151 of CPC is hereby allowed.**

**The proposed defendants are hereby permitted to come on record.**

**The plaintiffs are hereby directed to carry out necessary amendment by impleading them as defendant No.2 to 4.**

(Typed and prepared by me, directly on computer then corrected by me and then pronounced by me in the open court on this the 6<sup>th</sup> day of January 2025)

**(Arpitha B Bellad)  
C/c Civil Judge and J.M.F.C.,  
Ankola.**

**(Order Pronounced by in the open  
court vide separate order)**

**ORDER**

**The I.A. No.I filed by the  
proposed defendants under order I  
rule 10(2) R/W Section 151 of CPC  
is hereby allowed.**

**The proposed defendants are  
hereby permitted to come on record.**

**The plaintiffs are hereby directed  
to carry out necessary amendment  
by impleading them as defendant  
No.2 to 4.**

**C/c Civil Judge and J.M.F.C.,  
Ankola.**

