

KAUK210015122022



**IN THE COURT OF THE ADDL. CIVIL JUDGE AND J.M.F.C.
ANKOLA**

PRESENT

Smt. Arpitha B Bellad.

B.Com., LL.B.,
Civil Judge and J.M.F.C.,
Ankola.

ORIGINAL SUIT NO.95/2022

Dated this the 4th day of September, 2025

Plaintiffs:-

1. Smt. Prema Honnappa Nayak,
Age: 65 years,
O/c: Household,
R/o: Hoskeri, Tq. Ankola
2. Smt. Shobha Pramod Nayak,
Age: 58 years,
O/c: Household,
R/o: Adlur, Tq. Ankola
3. Smt. Rajamma Umesh Nayak,
Age: 54 years,
O/c: Teacher,
R/o: Shedageri, Tq. Ankola

[By: Sri. R.N.H., Advocate]

V/s

Defendants:-

1. Sri. Devanna Subraya Nayak,
Age: 59 years,
O/c: Agriculturist
R/o: Belekeri, Tq. Ankola
2. Sri. Narayan Bin Ramachandra Nayak,
Age: 60 years,
O/c: Agriculturist
R/o: Belekeri, Tq. Ankola

[D1 By: Sri. G.T.N., Advocate]

[D2 By: Sri. N.B.K., Advocate]

i.	Provision under which the application is filed	O.I. Rule 10 r/w sec 151 of CPC
ii.	Relief sought for	Impleadment of proposed defendant
iii.	The date on which the application is filed by proposed defendant	14/03/2025
iv.	Number of the application	IA No.III
v.	The date on which the objections are filed by the plaintiff and defendant	23/04/2025 and 25/04/2025
vi.	The date on which the hearing on the said application came to be concluded	14/08/2025
vii.	The date on which the orders were passed on the said application	04/09/2025

ORDERS ON IA III

1. This order arises out of an application moved by proposed defendant under Order I Rule 10 of C.P.C r/w section 151 of CPC seeking to implead the proposed defendant as defendant No.3 as mentioned in the application who is necessary party to the said suit.

2. The said application is accompanied with an affidavit sworn in by the proposed defendant wherein he stated that he is the only son of the defendant No.1 and he got to know about the present suit from plaintiff No.1. It is further contended that deceased Subray Devanna Nayak had executed the registered Willnama on 21/01/2016 in his sound state of mind in his favour pertaining to Sl.No.4 to 6 of the suit schedule properties, as such he is having an absolute right over the said properties and except him, no one is having any right over the aforesaid suit properties. The plaintiff being well aware of the said Willnama executed in his favour, has deliberately included those properties in the said suit and the plaintiff has not made him as a party to the suit who is having an interest in the said properties. Hence, prays to implead him as necessary party to the said suit by allowing the said application.

3. The plaintiff has refuted the said application by filing statement of objections by denying the said application as not maintainable and far away from the true facts of the case. It is

denied that Subraya Devanna Nayak had executed the Willnama in favour of the proposed defendant on 21/01/2016 and contended that the said Willnama is a sham and bogus one. The Sl.No. 4 to 6 which are the subject matter of the Willnama are not the self acquired properties of deceased Subray Nayak. The grandmother of the plaintiff deceased Devamma Devanna Nayak acquired moolgeni rights on 30/03/1944 in respect of the said properties through the Gift deed executed by Timmakka Bommayya Nayak. After her demise, Subray Devanna Nayaka had filed an application before the Land Tribunal and got entered his name. Since the said properties are originally belonged to deceased Devamma Devanna Nayak, as such they are the joint family properties of the plaintiff and defendants and deceased Subray Nayak was aged about 90 years in the year 2016 and was unable to move and was suffering from illness and was incapable to make any decisions. The alleged willnama is a created one. If in case, the willnama was executed, then the proposed defendant would have taken an action by filing for probate within the period of three years or else he would have filed a suit for declaration based on Will before this Court but he has not taken any steps in this regard, under such circumstances, at this stage, the proposed defendant cannot be impleaded as a party to the suit. On all these grounds, prays to dismiss the said application with costs.

4. The counsel for the defendant No.1 has filed the objections stating that the application is not maintainable and the applicant

is the son of the defendant No.1 who is already on record. At this stage, the applicant is not entitled for any share in the suit property, as such he cannot be impleaded as a defendant No.3 in the present case. On these grounds, prays to dismiss the application with costs.

5. Perused the entire materials on record.
6. In view of the above, only point would arise for my consideration:
 1. **Whether the application filed under order I rule 10 filed by the proposed defendant to implead him in the present suit deserves to be allowed?**
 2. **What order ?**
7. My answers to the point no.1 is in the **Affirmative.**

REASONS

8. Point No.1 : The present suit is filed by the plaintiffs against the defendants seeking the relief of partition and separate possession of their 1/4th share each in the suit schedule properties on the ground that the suit properties are joint family properties of plaintiffs and defendants.

9. During the pendency of the case, the proposed defendant has moved the present application to implead him as necessary

party to the suit. In order to consider whether he is a necessary party or not, let me go through the provision of **Order 1 Rule 10 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.**

10. 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 reason 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 is the party to the suit. The purpose of this provision 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. Addition of parties is, however, a judicial discretion which is required to be exercised judiciously.

11. Coming to the present case on hand, admittedly, the plaintiffs have filed the suit seeking the relief of partition and separate possession of their share over the suit schedule properties. They have asserted that the suit schedule properties are joint family properties. Now the proposed defendant intends to come on record on the ground that deceased Subray Nayak had executed the Willnama in his favour in 21/01/2016 in respect of the Sl.No.4 to 6 of the suit schedule properties, as such he is an absolute owner and in possession of the said properties in which except him, none of the parties are having any rights over the said properties. . It is an admitted fact that the proposed defendant is the son of the defendant No.1 and it is also pertinent to note here that defendant No.1 in his written statement has taken a contention regarding prior partition and deceased Subray Nayak had executed the Willnama in favour of proposed defendant. It is also pertinent to note here that this Court has also framed an issue regarding the same. The proposed defendant is not seeking his share in the suit properties but he is claiming his ownership over Sl.No.4 to 7 of the suit schedule properties based on the Willanam alleged to have been executed by Subray Nayak, as such the proposed defendant becomes a necessary party to the suit. The question whether the suit properties are joint family properties or self acquired properties of deceased Subray Nayak is the question of trial which cannot be considered at this stage now. While addressing the arguments, the counsel for the plaintiff vehemently argued that the proposed defendant

has not taken any steps within the period of three years, as such his claim cannot be considered at this stage which is barred by law of limitation but it is pertinent to note here that while deciding the said application, this Court cannot go into the merits of the case and the knowledge of the proposed defendant in respect of the alleged Willnama is significant to apply the law of limitation and the same has to be unearthed only during the course of the trial, as such the contention of the counsel for the plaintiff sans merit.

12. When the proposed defendant is asserting his right and interest over the said suit properties, then he becomes necessary party to the suit and the question whether the deceased Subray Nyak had executed the Willnama in his sound state of mind in favour of proposed defendant and whether the proposed defendant is having any right or interest over the property requires full pledge trial and at the time of deciding the said application, this Court cannot conduct mini trial touching into the merits of the case and a mere affidavit is sufficient who asserts right and interest over the subject matter of the suit.

13. The rights of the parties cannot be judicially determined in the absence of the persons interested in contesting them. The Court is also required to ascertain the property to be partitioned. All persons interested in determining these and other questions that may be raised in a suit for partition are necessary parties. A

person who is not interested in the results of the suit or entitled to any share is not a necessary party. Conversely it means that where a person in a suit for partition is interested in its result and is entitled to a right, he must be regarded as a necessary party.

14. In the present case on hand, the proposed defendant is also claiming his right, interest and possession over Sl.No.4 to 6 of the suit properties, as such it is necessary to implead him in the present suit for effective determination of case in the suit properties. If the said application is not allowed, it will be having far reaching consequences shutting the doors for the proposed defendant which may lead to multiplicity of the proceedings. Under such circumstances, there is no impediment for this Court to allow the said application. Hence, this Court is of the opinion that proposed defendant is also necessary and interested party to the present suit filed for partition and separation possession of the properties. **With these observations. Point No.1 is answered in Affirmative.**

15. Point No.2: For the foregoing reasons, **this Court proceeds to pass the following -**

ORDER

The I.A. No. III filed by the proposed defendant under order I rule 10 r/w section 151 of CPC is hereby allowed.

The proposed defendant is hereby permitted to come on record.

Plaintiffs are hereby directed to implead the proposed defendant as defendant No.3 as mentioned in the said application.

(Prepared and typed by myself, then corrected by me then pronounced in the open court on this the 4th day of September- 2025)

**(Arpitha B Bellad)
C/c Addl. Civil Judge & JMFC.,
Ankola.**

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

ORDER

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proposed defendant under order I rule
10 r/w section 151 of CPC is hereby
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permitted to come on record.**

**Plaintiffs are hereby directed to
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said application.**

C/c. Addl. Civil Judge, Ankola.

