

IN THE COURT OF SENIOR CIVIL JUDGE BHATKAL, AT BHATKAL

PRESENT: SRI. KURANI KANT DHAKU

B.Com.,LL.B.(Spl.)

SENIOR CIVIL JUDGE, BHATKAL.

ORIGINAL SUIT NO. 09/2019.

DATED THIS 25th DAY OF FEBRUARY-2025.

BETWEEN:

1. SRI. GANAPPAYYA S/O: KUPPAYYA DEVADIG

-----**PLAINTIFF.**

[BY SRI. K. R. NAIK ADVOCATE FOR PLAINTIFF]

AND:

1. SMT. BHAGIRATHI W/O: KOGGA DEVADIGA AND OTHERS.

-----**DEFENDANTS.**

[BY SRI. M. L. NIAK DVOCATES FOR DEFENDANT No.2]

[BY SRI. I.M. NAIK ADVOCATE FOR DEFENDANT No. 3]

[BY SRI. S. V. ADI ADVPOCATE FOR DEFENDANT No.1(a) & (b)]

[BY SRI. M.J. NAIK ADVOCATE FOR DEFENDANT No.4]

[THE DEFENDANT No.1(b) PARTY-IN-PERSON]

PARTIES TO THE I.A No. XIII

BETWEEN:

1. SRII. IRRAPPA NAGAPPA DEVADIG

-----**APPLICANT.**

[ORIGINAL DEFENDANT No.2]

AND:

1. SRI. GANAPAYYA KUPPAYYA DEVADIG.

-----**OPPONENT.**

[ORIGINAL PLAINTIFF]

DETAILS OF INTERLOCUTORY APPLICATION AS PER CIRCULAR NO. R.J.163/2023 DATED 24.08.2023 AND WP NO. 201865/2023.

Provision under which application is filed	U/O.I RULE 10 (2) R/W SEC. 151 OF CPC
Relief sought for	FOR IMPEADING OF PARTY
The date on which the application is filed	06-10-2023
No. of application	IA No. XIII
Date on which the objections are filed by different opponents	01-12-2023
The date of order.	25-02-2025

SRI. KURANI KANT DHAKU.
SENIOR CIVIL JUDGE, BHATKAL.

ORDER ON I.A No.XIII UNDER ORDER I RULE 10(2) R/W SEC. 151 OF CPC

The present I A No. XIII is under Order X Rule 10 (2) R/w Sec. 151 of CPC, filed by the defendant No.2/applicant, seeking permission to implead in the suit one Sri. Vasanth Subha Devadiga as proposed defendant along with the applicant/defendant No.2.

2. In the affidavit, it is stated that the deceased defendant No.1 by name Bhagirathi had executed lawful registered WILL on 9.10.1991 and as per the WILL, the entire title and interest of the suit schedule properties were vested with applicant along with proposed defendant. So, the proposed defendant is necessary

party to the suit and hence, bringing the proposed defendant on record is necessary. Further, it is stated that the application filed by the plaintiff dated 15.09.2023 is not maintainable in view of WILL executed on 9.10.1991 and the persons referred in the application are also not entitled to inherent any property and they are not necessary party. Hence, the application filed on 15.09.2023 is liable to be rejected. Hence, prays to allow the I.A. for the interest of justice and equity.

3. On the other hand, the plaintiff /opponent has filed objection to this I.A. and contended that the I.A.No. 13 is quiet contrary to law and true facts and contended that applicant/ defendant No.2 has no right to seek impleadment of the proposed defendant as both the defendants are not the legal heir of the deceased defendant No.1 Smt. Bhagirathi. The reason assigned in the application along with affidavit are totally false and the defendant No.2 and proposed defendant are not the legal heirs of deceased Smt. Bhagirathi and they have also not the relative and not concern with the estate of the deceased Bhagirathi. Hence, the I.A.No. 13 is liable to be rejected. Further, it is contended that as per the registered WILL dated 9.10.1991 executed by deceased Bhagirathi, the defendant No.2/ applicant and proposed defendant are not entitle any right or inherit any property belongs to the deceased Bhagirathi. The defendant No.2/applicant ought to had file application Under Order 22 Rule 3 of CPC for bringing the LR's of the deceased within stipulated period. Hence, prays to reject the I.A. with heavy costs for the interest of equity and justice.

4. On careful perusal of material records, the points would arise for considerations are:

P O I N T S:

1. Whether the applicant/ defendant No.2 proves that the proposed defendant is necessary party for complete adjudication to settle all questions involved in the suit?

2. What order.?

5. I have heard the arguments both side and perused material records.

6. On careful perusal of entire material records, my findings to the above

points are as follows:

F I N D I N G S:

Point No.1 : In the Affirmative

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

R E A S O N S:

7. POINT NO.1: Admittedly, this is suit for partition and separate possession. The present I.A. is filed by the applicant seeking relief to implead the present proposed defendant stating that the proposed defendant is also legal heir of deceased Bhagirathi. Further, it is stated that by virtue of registered WILL executed by Bhagirathi, the proposed defendant is necessary party to the suit. On the other hand, the opponent/ plaintiff has denied the same and contended that the very applicant and proposed defendant are not relatives and legal heirs of the deceased Bhagirathi and they have no concern with the estate of the deceased Bhagirathi. Admittedly,

I.A.No. 13 is filed Under Order I Rule 10 (2) of CPC seeking permission to add the proposed defendant as defendant. On plain reading of Order I Rule 10(2) of CPC, it is clear that Court may at any stage of the proceedings strike out or add the party, if the presence of the proposed adding party is necessary for complete adjudication and for settle all the questions involved in the suit.

8. Admittedly, the deceased defendant No.3 Bhagirathi was died during the pendency of the suit. Further, on perusal of order sheet, it is seen that after the death of deceased defendant No.1, the learned Counsel for defendant No.1 has produced xerox "WILL DEED" and subsequently the defendants have produced original "WILL Deed". Further, for the purpose of scrutiny, this Court has called the original "WILL DEED" which is kept in safe custody. On perusal of WILL dated 9.10.1991, it is seen that the deceased defendant No.1 had executed WILL and on perusal of recital of the "WILL" deed, it is seen that the name of the proposed defendant by name Vasant Subba Devadiga is appeared in the "WILL" deed. A perusal of plaint, it is noticed that the deceased defendant No.1 is the daughter of one Sri. Kogga Kuppayya Devadiga and in the plaint, it is alleged that the suit schedule properties are joint family properties of plaintiff and defendants. So, when the name of the proposed defendant is appeared in the "WILL" deed, then it is not possible to this Court to proceed with the case in absence of proposed defendant. Admittedly, the present suit is partition and separate possession. So, for the complete adjudication of the suit, the presence of proposed defendant is very much necessary. The plaintiff /opponent has contented that the proposed defendant is not the relative or concern with the estate of

deceased defendant No.1. But, on perusal of "WILL" deed, it is seen that the name of the proposed defendant is appeared in the "WILL" deed dated 9.10.1991. So, the presence of proposed defendant is very much necessary to settle the question involved in the suit. Hence, I am of the considered view that I.A.No. 13 is to be allowed for complete adjudication of the suit. Hence, I answer point No.1 in Affirmative.

9. POINT NO.2 :- In view of reasons discussed supra, I proceed to pass the following:

ORDER

The I.A. No. XIII Under Order I Rule 10(2) r/w Section 151 of CPC is hereby ALLOWED.

The applicant/ defendant No.2 is permitted to implead the proposed defendant by name Vasant Subba Devadiga as defendant No.4.

The plaintiff is directed to carry out the amendment of plaint and add the proposed defendant as defendant No.4 in the plaint cause title.

(Dictated to Stenographer directly on computer, typed by her, revised and corrected by me and then pronounced in the Open Court on this 25th day of February - 2025)

**(SRI KURANI KANT DHAKU)
SENIOR CIVIL JUDGE, BHATKAL**

