

KAUK720001422024



**IN THE COURT OF THE SENIOR CIVIL JUDGE & PRL. JMFC.,
KUMTA, AT; KUMTA, UTTARA KANNADA**

Dated this the 24th day of July, 2024

PRESENT

**Smt. B.S.Rayannawar, B.A., L.L.B.,
Senior Civil Judge
& Prl. JMFC, Kumta.**

O.S.No.7/2024

Plaintiffs:

1. Sri. Razak Kasim Shaikh
Aged about 68 years,
Occ: Private job,
R/o. Baggon cross, Herwatta,
Kumta Taluk (U.K.) 581 332.
2. Sri. Rafiq Kasim Shaikh
Aged about 52 years,
Occ: Private job,
R/o. Santeguli,
Kumta Taluk (U.K.) 581 323.
3. Smt. Jarina Fayaz Shaikh
Aged about 40 years,
Occ: Household,
R/o. Santeguli,
Kumta Taluk (U.K.) 581 323.

(By Sri. M.D.R. - Advocate)

V/s

Defendant: Sri. Fakirsab Kasim Shaikh
Aged about 60 years,
Occ: Private job,
R/o: Katgal, Alvekod,
Kumta Taluk (U.K.) 581 362.

(By Sri. G.G.G. - Advocate)

**Proposed :
Defendants** 2. Sairabanu Akbar Shaikh
Aged about 50 years,
Occ: Household,
R/o: Raja Colony,
Aman Nagar,
Belgavi 590 016.

3. Aijaz Akbar Shaikh
Aged about 24 years,
Occ: Private job,
R/o: Raja Colony,
Aman Nagar,
Belgavi 590 016.

4. Senin Suleman Shaikh
Aged about 23 years,
Occ: Household,
R/o: Katgal, Kumta.

(By Sri. G.G.G. - Advocate)

ORDER ON I.A.No.I

Present application filed by the applicant/ proposed defendant No.2 to 4 Under Order I Rule 10A Read With Section 151 of CPC with a prayer to implead proposed defendants as defendant Nos.2 to 4.

2. I.A. supported with Affidavit of applicant/proposed defendant No.2 stating that, the said application is filed on behalf of proposed defendant Nos.3 and 4 also as they are her sons.

3. Further stated that, she is the wife of brother of plaintiff No.1. The main propositus of plaintiffs and defendants was Kasim Mahammad Shaikh had six children by name Mohammad Kasim, Razak Kasim Shaikh, Fakir Kasim Shaikh, Akbar Kasim Shaikh, Rafiq Kasim Shaikh and Jarina Fayaz Sab and she is the wife of Akbar Kasim Shaikh.

4. After the death of Mahammad Kasim Shaikh she demanded partition for their share in the family properties, but plaintiffs deined the same but the family members are agreed to partition the family properties and they have filed suit before the Court and she came to know about the same, when she verified the documents it reveals that the plaintiffs are not made them as party to the suit, they are also necessary party to the suit, hence without impleading them the suit of the plaintiffs is not maintainable one. The proposed defendants are the blood relative of the Plaintiff defendant No.1. If the application is allowed, no hardship and loss caused to the plaintiff on the other and if said application is not allowed it will not

compensated in terms of money. Hence applicant/proposed defendant No.2 to 4 prays to allow the application.

5. Application opposed by plaintiffs by filing written objections, contending that, the said application is not tenable both on question of law as well as question of facts, same is liable to be dismissed. It is contended that averments made in the application is not valid and proposed defendants are not necessary parties and they had no rights in the suit schedule properties. The surviving members of Kasim Mahammad Shaik and his wife Habib Kasim Sab are only entitled for share in the suit schedule properties, if the Akbar Shaikh predeceased to his father Kasim Shaik then his legal heirs are not having right in the property, to prove the same the proposed defendants not produced any document, hence they cannot claim any right in the property, the surviving brother and sisters are only becomes the legal heirs. The proposed defendant no.1 to 3 are the wife and children of Akbar Shaik, who predeceased to his father Sri.Kasim Mahammad Shaik, hence the legal heirs of late, Akbar Shaik are not having any share in the property left by Sri.Kasim Mahammed Shaik. The genealogical tree produced by the proposed defendants is concocted document. Hence the application is not liable to be allowed, hence prays to dismiss the application.

6. Heard both respective counsel of proposed defendants and plaintiffs.

7. Perused applications, annexed affidavit, objections and other materials on record. The points arise for my consideration are .

1. Whether the proposed defendants have made out ground to implead them as defendant Nos.2 to 4?

2. What order?

8. My findings on the above points are as follows:-

Point No.1 : In the Affirmative

Point No.2 : As per final order

For the following:

REASONS

9. **Point No.1:** Applicants themselves claims to be wife and sons of late Akbar Shaik. Indisputably, the plaintiff has filed this suit for partition and separate possession. Plaintiff has denied that, as the husband of first applicant and father of applicant no.2 and 3 Akbar predeceased to his father Sri.Kasim Mahmmad Shaik hence they are not entitled for any share in the properties. Applicants contend that, they are also entitled for the share in the family property, by the plaintiff not making them as party to the suit has filed this suit. In the present case, it is not proper on the part of the court to reject the application

outrightly. It is also pertinent to note that, the plaintiffs are not denying that the husband of first proposed defendant and father of second and third defendant late Akbar is not their brother. But it is the contention of plaintiffs that, if the Akbar is predecease to his father then the legal heirs of late Akbar not having any right in the property. Be that as it may, anyhow that aspect is a matter of evidence. But on perusal of pleadings already placed on record, it becomes clear that, applicants are entitled to raise their voice in respect of the relief sought by the plaintiff. Hence, in my considered opinion that, applicants are the necessary and proper parties and their presence is required for proper and effectual adjudication of this case. Hence, considering all these aspects, this court answer the point No.1 in Affirmative.

10. **Point No.2** :- In view of the reasons assigned above, above, this court proceed to pass the following order.

ORDER

IA.No.I filed by the applicants/proposed defendant No.2 to 4 U/o. I Rule 10 (2) R/w.Sec. 151 of CPC is hereby allowed.

Applicants are impleaded in this suit as defendant No.2 to 4.

Plaintiff to carry out necessary amendment in the cause title of the plaint and to furnish the amended plaint.

No order as to costs.

(Directly dictated to the stenographer to the computer, corrected and then pronounced by me in the open Court on this the 24th day of August, 2024)

(Smt. B.S.Rayannawar)
Senior Civil Judge
& Prl. JMFC., Kumta.

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