

KADG420010532013



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

Present : Smt. Fakirawwa Kelageri,
B.A.,LL.B.,
Civil Judge & JMFC, Harapanahalli

O S No.158/2013

Dated: This, the 6th Day of February 2023

Plaintiff : 1. Sri.G.Prakash S/o late Kallappa,
aged about 45 years, Hindu, Occ;
Cooking, R/o Harapanahalli town,
Davanagere District. And another.

(By Sri.T.L.S., Advocate)

-VS-

Defendant: 1. G.Rudrappa S/o Late.Kallappa,
Aged about 53 years,
R/o Harapanahalli town,
Davanagere District.

(By Sri.V.G.P., Advocate)

INTERLOCUTORY APPLICATION NO.III

Applicant: Sri.G.Prakash and another
(Oril.Plaintff)

-VS-

Opponents: Sri.G.Rudrappa and others
(Oril.Deft)

ORDERS ON IA NO.III

This is an application filed by Plaintiff under Order 1 Rule 10 (2) r/w 151 of C.P.C., requesting the court to implead the proposed parties as defendants No.7 as shown in the application.

2. Said application is accompanied with an affidavit sworn by the plaintiff No.1, wherein stated that, the suit schedule item No.3 property is the complex towards the road side and which has been let out to the proposed defendants shown in the schedule annexed to this application. Said proposed defendants are tenants under the defendants herein, the proposed defendant No.7 is running a saloon shop likewise the proposed defendant No.8 is running a textile shop in the suit schedule item No.3 property and they are paying rent of Rs.5,000/- p.m. and Rs.13,000/- p.m. to the defendants respectively and since that the suit schedule item No.3 property is also subjected to partition as the same is the ancestral property of him, the plaintiff No.2 and the defendants, the defendants alone are enjoying the rents derived from the complexes paid by the proposed defendants. Since that the suit schedule item No.3 property is ancestral property, he is also entitled for all the incomes/gains generated out of the same, hence it is necessary that the proposed defendants shall also be made as party to the suit as they are the proper and necessary party to this suit, hence this application. The defendants have not filed objection to above application.

3. Heard. Perused the records placed before the court.
4. The following points arises for my consideration.

Point No.1: Whether applicant has made out sufficient grounds that, the proposed parties are necessary for effective adjudication of dispute involved in the suit?

Point No.2: What order?

5. My answer to the above points are as follows:

Point No.1: In the Negative.

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

REASONS

6. **Point No.1:-**The present application filed by the applicant/Plaintiff, requesting the court to implied proposed defendants as parties to the suit on the ground that, it is necessary implead proposed defendants No.7 by name Ramesh S/o Nagappa and defendant No.8 by name Yakoob Sab S/o Abhar Sab in the suit for effective adjudication of dispute involved in the suit.

7. Order 1 rule 10(2) CPC., empowers the court to add or strike of any parties in the suit, if the same is essential for proper adjudication of the matter in dispute between the parties. The said provision also empowers the court to add the any parties if their presence is necessary in proper adjudication of the matter.

8. On perusal of contention urged by both parties it appears that this suit is filed for the relief of partition and separate possession with respect to the suit schedule properties. The present application is filed by the proposed plaintiff seeking permission to implead proposed parties as defendant No.7 and 8 in this suit. According to him The suit item No.3 property complex towards the road side and let out to the defendant No.7 and 8 and they are tenants under the defendants since that suit schedule item No.3 also subjected to partition as same is ancestral property of plaintiffs and defendants. He is also entitled for all the income/gains generated out of the same. The suit schedule item No.3 property is ancestral property. There is no partition in his family. The plaintiff has prove suit item No.3 property is ancestral property only.

9. It is material to note here that in suit for partition the preliminary decree only sharers of the parties have to be determined. In the present case, the proposed defendant No.7 and 8 are not sharer or co-owners of suit schedule properties. Therefore the presence of the defendant No.7 and 8 are not necessary. As such defendant No.7 and 8 are not necessary party to the suit. As per contention of the plaintiff and the proposed defendant No.7 and 8 are tenants under the defendants herein and suit item No.3 property is complex. But the plaintiff has not filed any application under order 41 of CPC., for appointment of receiver and even the plaintiffs have not claimed manse profit herein. Under such circumstance the presence of the proposed defendant

No.7 and 8 are not required to adjudicate the matter. However the object of **Order 1 Rule 10 CPC** is that "a person may be added as a party whether as plaintiff or as defendant when he ought to have been joined as a party or when his presence is necessary in order to dispose of the suit effectively". In the instant suit for the reasons discussed above the presence of the proposed defendant is not required. In his absence also matter will be adjudicated effectively. Therefore this Court is of the opinion that the application filed by the plaintiff is liable to be dismissed. Accordingly point No.1 is answered in the **negative.**

10. Point No.2:- On above made discussion on point No.1, I proceed to pass the following:

ORDER.

I.A.No.III filed by the Plaintiff U/O. 1
Rule 10 (2) R/w.Sec.151 of C.P.C is hereby
rejected.

No order as to cost.

(Dictated to the Stenographer directly on computer, revised by me and then pronounced in the open court this the 6th day of February 2023).

**Civil Judge and JMFC.,
Harapanahalli.**

