

**IN THE COURT OF THE CIVIL JUDGE & JMFC,  
HARAPANAHALLI.**

**Present: SMT. SHOBHA B.G., M.A., LL.B.,**  
Civil Judge & JMFC, Harapanahalli.

Dated this the 2<sup>nd</sup> day of July, 2020.

**O.S. NO.279/2013**

**Plaintiff/s** : Smt. Kusuma since dead by her successor  
(Rept. by Sri V.G.P, Advocate)

**-V/s-**

**Defendant/s** : Smt. Sumithamma and others

(Rept. by Sri R.G.P., Advocate D.2,  
Rept. By Sri. M.S.B., Advocate D.3  
and 4)

**I.A. No.VI**

Applicant : Smt. Kusuma since dead by her successor

**Vs.**

Opponents : Smt. Sumithamma and others

**ORDERS ON I.A.NO.VI U/O 1 RULE 10(2) R/W SEC.151 OF CPC**

This is an application filed by the plaintiff seeking permission to implead the proposed defendant No.3 and 4 as defendants in this suit.

**2.** The said application is accompanied with an affidavit sworn by the plaintiff wherein he has stated that his sister in law has filed this suit against the defendants for partition and separate

possession. During the pendency of suit his sister in law was died i.e., original plaintiff. She had executed a registered WILL in his favour. As such he became the plaintiff in this suit as per succession and testamentary right. This suit property stands in the name of father of defendant. After his death the defendants have obtained katha in their name and sold item No. 3 of suit schedule property to proposed the defendant No. 3 and 4. The katha of said property has been changed in their name behind the back of plaintiff. Hence to avoid multiplicity of proceedings he has filed this application to implead them. If the application is allowed, no hardship will be caused to the other side. If application is not allowed it will leads to multiplicity of proceedings. Hence prayed to allow the application.

**3.** The said application is resisted by the proposed defendant No. 3 and 4 by filling objection wherein they have contended that the application is not maintainable either in law or facts. The avernments of affidavit are all false. The applicant/plaintiff is not having any right to file this application. The original plaintiff by name Smt. Kusuma was died and she has no legal heirs. The present plaintiff is not a legal representative of said deceased Smt. Kusuma. He has come up with this suit by

stating that he is legal representative of original plaintiff by concocting WILL said to be executed by deceased plaintiff. The proposed defendant No. 3 and 4 have purchased item No. 3 of suit schedule property from the defendant No. 1 and 2 through registered sale deed on 12-02-2016 by verifying the documents stands in the name of defendant No. 1 and 2. By virtue of sale deed they have obtained katha in their name. Since then they are in possession and enjoyment of the suit schedule property. The present plaintiff has concocted WILL by stating that on 29-09-2014 the deceased plaintiff has executed WILL in his favour. The original plaintiff died on 12-02-2015. The present plaintiff after abatement of suit came to the Court and he was impleaded as legal representative of deceased original plaintiff on 29-06-2015. Said WILL is in dispute. At that time said present plaintiff and defendant No. 1 and 2 by colluding with each other brought him as legal representative of deceased original plaintiff with an intention to grab the property of defendant No.3 and 4. Hence prayed to dismiss the application.

**4.** Heard arguments.

**5.** On perusal of the pleadings, documents and application, the following points that arise for my determination are:-

1. Whether the plaintiff has made out sufficient grounds that the proposed defendant No. 3 and 4 are proper and necessary parties to this suit ?
2. What order ?

6. My answer to the above points is :

Point No.1 : In the Affirmative;

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

### **REASONS**

7. **Point No.1:-** On perusal of contention urged by both parties it appears that this suit is filed by the original plaintiff for relief of partition and separate possession and such other relief. The present application is filed by the present plaintiff seeking permission to implead defendant No. 3 and 4 as defendants. According to him, the defendants have obtained katha in their name after death of their father. Thereafter they have sold item No.3 of suit schedule property to the defendant No. 3 and 4. Now the katha of said property stands in their name. Hence they are necessary parties to this suit. According to proposed defendant No 3 and 4 the present plaintiff is not a legal representative of original deceased plaintiff. He has concocted WILL stating that the original plaintiff has executed said WILL in his favour. However on

considering material placed before the Court, it discloses that the proposed defendant No. 3 and 4 admitted that they have purchased item No. 3 of suit schedule property and katha was mutated in their name. Whether the present plaintiff is a legal representative of original deceased plaintiff ? Or not ? cannot be decided in this application as he was already brought on record as legal representative of deceased plaintiff.

**8.** In support of the application the plaintiff has produced documents such as certified of sale deed, encumbrance certificate, ROR and mutation extracts. Said documents disclose that the defendant No. 3 and 4 have purchased item No. 3 of suit schedule property from defendant No. 1 and 2 on 12-02-2016. The of said property was mutated in their name. When the katha of item no. 3 of suit schedule property stands in the name proposed defendant No. 3 and 4, their presence is required for adjudicate the matter effectively. 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 this suit for the reasons discussed above this Court of the opinion that the impleading of applicant is just and necessary to meet the ends of

Justice. Therefore if the application is allowed no hardship will be caused to the proposed defendant No. 3 and 4. On the other hand if the application is not allowed the plaintiff will be put to irreparable loss and injury. Moreover it will leads to multiplicity of proceedings as this suit is filed for partition. Therefore the application filed by the plaintiff deserves to be allowed. Accordingly point No.1 is answered in the **affirmative**.

**9. Point No.2:-** In view of the above discussion, I proceed to pass the following;

**ORDER**

**IA No.VI filed by the plaintiff U/O.1 Rule 10(2)**

**R/W section 151 of CPC is hereby allowed.**

**The plaintiff is permitted to implead the proposed defendant No. 3 and 4 as defendants in this suit.**

*(Dictated to the stenographer on computer, computerized by her, revised, corrected and then pronounced by me in the open Court on this the 2<sup>nd</sup> day of July 2020)*

**(SHOBHA B.G.)**  
Civil Judge & JMFC.,  
Harapanahalli.

**(Order pronounced in open Court  
vide separate order)**

**ORDER**

**IA No.VI filed by the plaintiff  
U/O.1 Rule 10(2) R/W section 151 of  
CPC is hereby allowed.**

**The plaintiff is permitted to  
implead the proposed defendant  
No. 3 and 4 as defendants in this  
suit.**

Civil Judge & JMFC.,  
Harapanahalli.