

:: ORDER ON IA NO.3 ::

The present IA No.3 is filed by the proposed defendant no.2 U/o 1 Rule 10(2) of Code of Civil Procedure praying this court to implead proposed defendants No.2 & 3 in this case.

2. It is stated that, the plaintiffs have filed suit for partition and separate possession against the defendant no.1. But the plaintiffs have not made party to her in the said proceedings. It is further stated that, she is daughter of the deceased Ningond and the proposed defendant no.3 is the wife of the deceased Ningond. The suit schedule properties are ancestral property of deceased Ningond. It is further stated that, the plaintiffs have suppressing true facts and filed false suit only with an intention to dupe legitimate share of mine and defendant no.3. Hence, suit is barred under non-joinder of necessary party, she is having legitimate share in the suit property, further the partition opened among the family members. Hence, she is entitled to get the share in the suit property. This application is not allowed she will put into heavy loss. Hence, prayed this court to allow the IA No.3 as sought for.

3. Per contra learned counsel for the plaintiffs filed objections to IA No.3 denying the entire allegations made by the proposed defendant no.2 in her I.A.No.3. It is denied that the plaintiffs have suppressing the true facts and filed false suit only with an intention to dupe legitimate share of proposed defendants no.2 & 3. Further it is denied that, the suit is barred under non-joinder of necessary party. It is further denied that, the proposed defendants no.2 & 3 are having legitimate share in the suit property. It is contended that, they have filed this suit for partition and separate possession and permanent injunction against the defendant in respect of suit properties. But, at the time of effecting the partition between the defendant and his brother the proposed defendants no.2 & 3 have given their consent the said partition by receiving their share. Hence, the proposed defendants no.2 & 3 are not necessary parties in this suit and they lost their right. Hence, prayed to dismiss the IA No.3.

4. Heard the both sides.

5. The following points that arise for my consideration are as under:-

1. Whether the proposed defendants no.2 has made out sufficient grounds to allow the I.A. No.3 filed U/o 1 Rule 10(2) of CPC?
2. What order?

6. My findings on the above point No.1 is in affirmative and point NO.2 is as per final order:

:- R E A S O N S :-

7. **Point No.1** :-Plaintiff is no doubt dominus-litis and is not bound to sue every possible adverse claimant in the same suit. He may choose to implead only those persons as defendants against whom he wishes to proceed though under Order 1 Rule 3, to avoid multiplicity of suit and needless expenses all persons against whom the right to relief is alleged to exist may be joined as defendants. However, the Court may at any stage of the suit direct addition of parties. A party can be joined as defendant even though the plaintiff does not think that he has any cause of action against him. Rule 10 specifically provides that it is open to the Court to add at any stage of the suit a necessary party or a person whose presence before the Court may be necessary in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit. Sub-rule (2) of Rule 10 gives a wide discretion to the Court to meet every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on record.

The question of impleadment of a party has to be decided on the touchstone of Order 1 Rule 10 which provides that only a necessary or a proper

party may be added. A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case.

Order 1, Rule 10, CPC confers discretionary jurisdiction in the interest of justice and to avoid further multiplicity of proceedings as well as to see that all questions involved in the matter are finally adjudicated upon. It has been conferred a discretionary jurisdiction. This Court has been entitled to consider the question whether the proposed party is a necessary or a proper party to be impleaded in the suit and his impleadment was necessary for final adjudication, in view of the claim made

The proposed defendant No.2 is the daughter of the original propositor Ningond Heggond and the proposed defendant No.3 is the wife of original propositor deceased Ningond Heggond. Since proposed defendants No.2 and 3 are the daughter and wife of original propositor deceased Ningond Heggond, they are necessary parties without whose presence the matter cannot be adjudicated. More-

ever the plaintiff will be having an opportunity to cross-examine the proposed parties to elicit the truth. At this stage if the present petition is allowed no prejudice would be caused to the plaintiffs. In the considered opinion of this court, the proposed defendants are necessary parties to the suit. Hence point No.1 is answered in affirmative.

11. **Point No.2:-** For the discussions made above following :

: ORDER :

I.A.No.3 filed by the proposed defendant no.2 U/o 1 Rule 10(2) of Code of Civil Procedure 1908, is hereby allowed.

The proposed defendants No.2 and 3 are permitted to be brought on record as sought for.

For amendment and amended
plaint.

Call on 13-06-2017

(Typed to my dictation by steno directly on
computer on 20th day of April 2017)

(Lakshmikanth Janakiram Miskin)
Civil Judge & JMFC, Indi