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IN THE COURT OF PRL CIVIL JUDGE AND JMFC., AT YADGIRI

PRESENT

Sri. Arun Chougule,

B.A.LL.B.[Hons.]

Prl. Civil Judge and J.M.F.C,

Dated this the 22nd day of September-2025

ORIGINAL SUIT NO.28/2011

PLAINTIFF/S:-	Pramila D/o Shivaramsingh Tiwari, aged about: 40 years, Occ: Agriculturist & household, R/o: Gadi Mohall, Gurumitkal Tq: & Dist: Yadgiri.
	(By Sri. Y.V.V Advocate)
-V/S-	
DEFENDANT/S:-	Lachiram S/o Shivaramsingh Tiwari, aged about: 42 years, Occ: Agriculturist & household, R/o: Gadi Mohall, Gurumitkal Tq: & Dist: Yadgiri.
	(By Sri.N.R.K Advocate)

IN I.A.Nos.13 and 14

<u>Applicants/ proposed defendant No.2 to 4 :</u>	Rakhi W/o Basvanthsinh Thakur (D/o Gopal Singh) and Others,
-V/S-	
<u>Opponents/ plaintiffs :</u>	Pramila D/o Shivaramsingh Tiwari,

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i.	<i>Provision under which the application is filed</i>	Order 1 Rule 10 Of CPC and Order 8 Rule 1(A) of CPC.
ii.	<i>Relief sought for</i>	<i>Seeking to implead as defendants</i>
iii.	<i>The date on which the application is filed</i>	05-08-2025
iv.	<i>Number of the application</i>	IA Nos.13 and 14
v.	<i>The date on which the objections are filed by different opponents</i>	
vi.	<i>The date on which the orders were passed on the said application.</i>	22-09-2025

ORDER ON I.A.NOS.13 AND 14 FILED BY THE APPLICANTS/PROPOSED DEFENDANTS NO.2 TO 4 UNDER ORDER 1 RULE 10 AND ORDER 8 RULE 1(A) OF CPC.

The applicants have filed IA No.13 under Order 1 Rule 10 of CPC seeking to implead them as defendants No.2 to 4 in the suit and IA No.14 under Order 8 Rule 1(A) of CPC seeking permission to produce documents.

2. The applicant/proposed defendant No.3 has sworn to affidavits in support of the applications stating that, the plaintiff had initially filed the suit for declaration and injunction based

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on memorandum of partition. The suit was decreed and the defendant aggrieved thereby had filed an appeal before the Hon'ble Senior Civil Judge, Yadgiri in RA No.19/2015, which appeal was allowed and the judgment passed by this Court was set aside. Thereafter, the plaintiff herein filed appeal before the Hon'ble High Court of Karnataka, Kalaburgi Bench in RSA No.200120/2016 and during the pendency of said appeal, she filed an application under Order 41 Rule 27 of CPC seeking to remand the matter to this Court to hold an enquiry afresh. After remand by the Hon'ble High Court, the plaintiff has got the plaint amended and incorporated additional relief of partition and got included some other properties in the suit. As such, now the suit for partition and declaration, and the applicants being daughters of Late Gopalsingh, who was the elder brother of the plaintiff and the defendant herein, are entitled for legitimate shares in the suit properties. It is stated that some of the suit properties were purchased by said Late Gopalsingh under registered sale deeds during the minority of the applicants. As such, applicants are necessary and proper parties to the suit. Hence, the applicants pray to allow the application.

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3. Learned counsel for the plaintiff submitted that he has no objections to the applications.

4. I have heard arguments of learned counsel for the applicants and perused the records.

5. After hearing the arguments and perusal of pleading and records, the following points arise for my consideration.

1. Whether the applicants are necessary parties to the present suit?

2. What order?

6. My findings on the above points are as under;

Point No.1 : In the Negative.

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

REASONS

7. **POINT NO.1:** The plaintiff has filed the present suit seeking the relief of declaration of title and permanent injunction restraining the defendant from dispossessing her from the suit lands.

8. The case of the plaintiff is that herself and the defendant are brother and sister and they are members of

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Hindu divided family. That, all the family properties were divided in a family oral partition held on the day of Ugadi in the year 1982 and thereafter, the terms of partition were reduced into writing in form of a memorandum of partition on 03.05.1993. Since the date of partition, the plaintiff and the defendant are in lawful possession and enjoyment of the properties fallen to their respective shares. That, the suit schedule properties and non-suit schedule residential house were fallen to the joint share of the plaintiff, her deceased mother Amruthabai and her deceased sister Jugunabai. After the partition, the suit lands except suit item No.6 were mutated in the name of plaintiff's mother. Thereafter, the plaintiff's sister died on 19.09.2003 and her mother died on 03.11.2008. After the death of her mother and sister, the plaintiff having become the absolute owner is in possession and enjoyment of the suit lands. It is alleged that the defendant having no manner of right, title or interest over the suit properties is denying the plaintiff's title over the suit properties and trying to dispossess her therefrom. Hence, plaintiff was constrained to file the present suit.

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9. On receipt of suit summons, the defendant having appeared through his counsel filed written statement denying the case of the plaintiff including the alleged oral partition claimed by the plaintiff. The defendant contended that his father Shivaramsingh Tiwari was the owner of the suit properties and other non-suit schedule house and shops situated at Gurumitkal Town. The father of the defendant died in the year 1977 leaving behind his widow Amruthabai, two sons by names Gopalsingh (died in the year 1985) and Lachiramasingh (defendant), and three daughters by names Radhabai, Umabai and Pramila (plaintiff). It is contended that, after the death of elder son Gopal Singh in the year 1985, the family met into division wherein the defendant's mother Amruthabai had voluntarily taken an open plot situated near bus stand, a shop bearing No.1-7-56, lands bearing Sy.Nos.135/A and 135/2-A along with southern $\frac{1}{2}$ portion of the house for her share. That, the plaintiff is getting rent of Rs.2,000/- per month from the shop and yield from the lands bearing Sy.No.135/A and 135/2-A and she is residing in the southern $\frac{1}{2}$ portion of the house. The plaintiff and her mother used to reside in their portion of the house and they were

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leading life out of the income received from the above two lands and the rent. That, the plot fallen to their share has been sold by the plaintiff and her mother. After the death of their mother, the plaintiff is residing alone and she is receiving rent and yield from the lands. However, the plaintiff has filed false suit on the instigation of her sister Radhabai's husband Premprasad with an intention to cause loss to the defendant. On these grounds, the defendant sought to dismiss the suit.

10. Thereafter, having regard to pleadings of the parties, this Court framed necessary issues and recorded evidence of both parties. Thereafter, the suit was decreed by judgment dated 26.03.2015. Aggrieved by the same, the defendant filed appeal before Hon'ble Court of Senior Civil Judge, Yadgiri in RA No.19/2015, which came to be allowed and the decreed passed by this Court in favour of the plaintiff was set aside. Thereafter, the plaintiff filed appeal before Hon'ble High Court of Karnataka in RSA No.200120/2016 and filed an interim application before the Hon'ble High Court under Order 41 Rule 27 of CPC seeking permission to produce the Will deeds said to have been executed by her deceased mother and sister bequeathing their

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shares in the suit properties and non-schedule properties in her favour. The Hon'ble High Court allowed the appeal by judgment dated 15.09.2021 and remanded the matter to this Court with a direction to receive additional documents and provide opportunities to the parties to adduce evidence on the additional documents and to hear the matter and pass judgment in accordance with law. As per judgment of Hon'ble High Court, the matter was restored by this Court to its original number. Thereafter, plaintiff filed IA No.8 U/o 6 Rule 17 of CPC seeking permission to amend the plaint to incorporate pleadings regarding execution of Will by her deceased mother and sister and additional relief of declaration based on Will. The said application, after contest, was partly allowed by this Court by an order dated 05.12.2024. Thereafter, the defendant filed additional written statement and this Court has framed additional issues. When the matter was posted for further evidence of the plaintiff on additional issues, the applicants have filed present application seeking to implead them as defendants No.2 to 4 in the suit.

11. The plaintiff and the defendant herein are the children of deceased Shivaramsingh Tiwari. The applicants are the

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children of Late Gopalsingh who was the brother of the plaintiff and defendant herein. The applicants are seeking to implead them in the suit on the ground that the present suit is for partition and they being the children of Late Gopalsingh are entitled for legitimate share in the suit properties and therefore, they are necessary parties to the suit. However, it is relevant to note that, the suit is for declaration of title and permanent injunction, and not for the relief of partition. The plaintiff had sought permission to incorporate additional relief of partition in respect of non suit lands under IA No.10, however, this Court has rejected and denied the said relief to the plaintiff. Thereby, it is clear that the applicants have filed the present application on the wrong assumption that the suit is for partition and declaration. Admittedly, the case of the plaintiff is that the suit properties were allotted to the joint share of herself, her sister Jugnabai and mother Amruthabai. Further case of the plaintiff is that her deceased mother and sister have executed Wills dated 29.11.2001 bequeathing their share in the suit properties in her favour. The burden is upon the plaintiff to prove her case. As such, presence of the applicants is not necessary for

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deciding the matter on hand. Hence, applications deserve to be dismissed. Accordingly, point No.1 is answered in the Negative.

12. **POINT NO.2:** In view of the above discussion, the following;

ORDER

IA Nos.13 and 14 filed by the applicants/proposed defendants No.2 to 4 under Order 1 Rule 10 and Order 8 Rule 1(A) of CPC are hereby dismissed.

No orders as to costs.

(Dictated to the stenographer, transcribed by him, transcript corrected by me and then pronounced on this the **22nd day of September, 2025.**)

(ARUN CHOUGULE)
PRL.CIVIL JUDGE & JMFC,
YADGIRI.