

**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC.,
SHAHAPUR.**

DATED THIS THE 16TH DAY OF JUNE 2025

Present: Smt.Hema Pastapur,B.A., LL.B

SENIOR CIVIL JUDGE & JMFC., SHAHAPUR.

O.S.No.27/2020

Ayyamma and Anr V/s Eramma and Anr.

I.A. No.IV Cause Title

Plaintiffs:

1. Ayyamma W/o Shankrappa Balkal
Age: 65 years, Occ: Agri & House-hold,
2. Guranna S/o Shankrappa Balkal
Age: 50 years, Occ: Agri.

Both are R/o Ukkinal village
Tq: Shahapur, Dist: Yadgiri

(By Sri. S.V.K., Advocate).

V/s

Defendants:

1. Eramma W/o Sahabgouda Balkal
Age: 74 years, Occ: H.H.
2. Basamma W/o Shankrappa Balkal
W/o Rachangouda, Age: 59 years,
Occ: H.H., & Agri.

Both are R/o Ukkinal village
Tq: Shahapur, Dist. Yadgir.

**(Defendant No.1 by Sri. M.N.P., Advocate)
(Defendant No.2 Exparte)**

Proposed Defendant No.3: Kallappa S/o Basvanthraya
Angadi, Age: 40 years, Occ: Agri.
R/o Ukkinal village, Tq: Shahapur
Dist. Yadgir.

(By Sri. R.N.D., Advocate)

:- ORDER ON I.A.NO.IV:-

1. That, the plaintiffs have filed the application under Order 1 Rule 10 of Civil Procedure Code, with a prayer to implead the proposed defendant No.3 in present case.
2. That, the plaintiff No.2 in her affidavit has sworn to the fact that the defendant No.1 in his written statement has pleaded that she had sold the suit land bearing Sy.No.29/3 measuring 09 acres 17 guntas to the proposed defendant No.3. That, in view of the same the proposed defendant No.3 becomes a proper and necessary party to the suit.
3. That, the proposed defendant No.3 filed his objections to the said application and has pleaded that, the suit is one for partition and separate possession and though, he had purchased the said suit property but, neither he is a necessary nor proper party to the suit. That, the proposed defendant No.3 in view of his aforesaid contentions as prayed

for rejecting the said application.

4. That, I have heard the arguments and perused the materials placed on record. That, the following points arise for My consideration and determination :-

1. Whether the plaintiffs have made out grounds to allow their said application as prayed for ?

2. What order?

5. That, My answer to the aforesaid points are as under :-

Point No.1 : in the **AFFIRMATIVE**.

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

:- R E A S O N S :-

6. **Point Nos.1**: That, the plaintiffs have claimed that the defendant No.1 in her written statement has specifically pleaded that she had sold the said suit property to the defendant No.1. Hence, in view of the said pleadings it is very much necessary to implead the proposed defendant No.3 as he is a necessary and proper party to the suit.

7. That, the proposed defendant No.3 has pleaded that though, he had purchased the said suit property but, the present suit is one for partition and separate possession and

in view of the same neither he is a proper nor necessary party to the suit.

8. That, the proposed defendant No.3 has placed his reliance on the following decision :-

2019 (4) KCCR 3132

Smt. Jayamma

Versus

H. Thippa Reddy and Others

**Writ Petition No. 55 of 2019 (GM-CPC),
decided on 20.3.2019. Wherein it has held
that,**

**A. CIVIL PROCEDURE CODE, 1908-Order
1, Rule 10(2) r/w Section 151-Impleading
application-Suit for partition and separate
possession - Impleadment of pendente lite
purchaser as defendant-Application by
plaintiff-Pendente lite purchaser not alleging
collusion between plaintiff and defendant
requiring his impleadment enabling protection
of his rights-Ultimately matter lies within
discretion of Court-Rejection of application
not interfered with.**

B. HINDU LAW-Partition-Stage of passing

preliminary decree-Question to be considered by Court-Presence of pendente lite purchaser-Whether necessary.

Held: In a suit for partition, at the stage of passing of a preliminary decree for partition, the only question that needs to be adjudicated by the trial Court is whether the property in question is a co-parcenary property or a joint family property and if so, what is the share to which the family preliminary stage, the presence of licensee (pendente lite purchaser) is not necessary. Petition dismissed.

9. It is to be noted here that, in present case it not in dispute that the proposed defendant No.3 had purchased the said suit property.

10. It is to be noted here that, 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.

11. It is to be noted here that, the present suit is one for

partition and separate possession. That, the proposed defendant No.3 though, is not a necessary party to the suit but, he is a proper party to the suit. It is very much necessary to implead him in present suit for complete and final decision on the question involved in the proceeding. Hence, without much discussion point No.1 is answered in the **AFFIRMATIVE**.

12. **Point No.2:** That, as discussed on point No.1, I proceed to pass the following:-

:- O R D E R :-

That, the application filed by the plaintiffs under I.A.No.IV is hereby allowed.

That, no order as to costs.

That, the plaintiffs are permitted to implead the proposed defendant No.3 in present case and carry out the amendment and file amended plaint on 30.06.2025.

(Smt. Hema Pastapur)
Senior Civil Judge
&,JMFC, Shahapur.