

MHSN080000052014



**Order below e application Exh. 47 in RCS 4/2014
Mahadevi Vs Mahadev**

The application is under Order 1 Rule 10(2) of the Code of Civil Procedure, 1908 (the C.P.C).

2 Perused the application, say (Exh.48), and the record.

3 Heard, both the sides.

4 The suit is for partition, and other consequential reliefs. Plaintiff 1 is the wife of deceased Sidram, who is brother of Kalappa(P4), and Mahadev (D1). Plaintiffs 2 and 3 Sangappa and Mahesh are the children of Mahadevi and Sidram. Gangavva is the wife of Kalappa (P4). Plaintiffs 6 to 9 are the children of Kallappa and Gangavva. Defendants 3 to 5 are the children of defendants 1 and 2. It is averred that the nature of the suit property is of HUF. Partition was demanded. The same was refused. The contesting defendants have filed their written statement cum say below Exh.28 and contested the claim. The learned predecessor has framed issues. The matter is part heard. The matter is posted for further evidence of the plaintiffs.

5 The application is premised on the ground that the deceased Sidram has second wife namely viz., Nimbyavva and Shashikala is a daughter from the said relation. The presense of the proposed defendants is necessary for disposal of the suit.

6 The application is opposed on the ground that the plaintiffs witness has admitted during cross examination that Nimbyavva is the wife of deceased Sidram and therefore, to fill up the lacunae the application is filed. Deceased Sidram had the first wife and the daughter Shashikala who have not been arrayed as a party. Hence, the application is opposed.

7 The following points arose for my determination to which I record my findings together with the reasons thereof.

Sr.No	Points for determination	Findings
1	Whether the presense of the proposed defendants is necessary for disposal of the suit?	Yes
2	What order?	As per the final order

Reasons

Point 1

8 It is settled law that the power under Order 1 Rule 10 of the CPC may be exercised at any stage of the proceedings either on application on suo-motu.

9 On perusal of the record, the plaintiffs came with a theory that Mahadevi is the first wife. After the evidence, Nimbyavva is the second wife and Shashikala is daughter from second wife. The defendants came heavily with the contention that relation has been admitted during cross examination and therefore, the application is misconceived. On prima facie perusal of the VF 7 and 12 of the suit property, the name of Nimbyavva and Shashikala appears vide ME 14185. The same has been placed on the record. In view of the above facts, it is highly disputed that whether Mahadevi or Nimbyavva is the first wife for otherwise. Even otherwise, Shashikala is daughter from second marriage may have a right/share, if ultimately the suit is decreed. Therefore, for the above reasons, the presense of the proposed defendants is necessary for the disposal of the adjudication of the rights of the parties vis-a-vis the nature of the suit. Costs follows the event. Accordingly, point for determination is answered. To avoid multiplicity of the proceedings and prejudice, I pass the following

Order

The application is allowed.

2 Plaintiffs to carry out the proposed amendment forthwith, and file on record duly amended copy within 7 days from today.

3 Issue suit summons to the newly added defendants via special bailiff and RPAD also. The plaintiffs to file service affidavit.

4 Costs in the cause.

Jath
Date:15/11/2025

(Sanjay P. Bunde)
Jt.C.J.J.D, Jath