

I.A. No.2/2022

in

O.S.No.72/2020

Order Date 26.08.2022

Order pronounced,

Heard both sides. Perused the records.

2. This is a petition filed by the petitioners seeking to implead him as additional 11th defendant. Admittedly the 1st respondent/plaintiff has filed the main suit seeking for the relief of partition and other reliefs against the other respondents who were defendant 2 to 10. The suit is posted for trial. At the stage, the petitioner has filed this petition stating that he has also interest in the property which is sought to be partitioned and that he is also son of Subbaiah Nadar who is the father of 1st respondent/plaintiff and that his father Subbaiah Nadar died leaving behind him, the petitioner and others and that he is the 1st legal heir of Subbaiah Nadar and

therefore he is also entitled to 1/7 share in the suit property and hence he is necessary party to suit.

3. The 1st respondent/plaintiff resisted the application on the ground that already oral partition was effected between the plaintiff and her brothers and in the said oral partition the petitioner was allotted properties and he sold the same to strangers and that hence he is not necessary parties to the suit and that since already oral partition was effected between the petitioner and the 1st respondent/plaintiff, this petition is not maintainable.

4. No doubt it is true that the plaintiff is the dominus litus. The said rule is not applicable in case of non joinder of necessary parties. Here in this case, the objections raised by the 1st respondent/ plaintiff would themselves show that the petitioner is necessary parties. It is admitted fact that the petitioner is also

brother of the 1st respondent/plaintiff. They are son and daughter of Subbaiah Nadar. The relationship is admitted. But the 1st respondent/ plaintiff states that already oral partition was effected between the petitioner and the 1st respondent and the petitioner was allotted properties which were sold by the petitioner. Even if it is so still the petitioner is necessary party to this suit for partition. The main suit, in this case is for partition. It is needless to say that in a suit for partition, all the coparcener/co owners are necessary parties to the suit. Even to prove oral partition, all the parties to the oral partition are necessary parties in a suit for partition. In the absence of all of the coparcener, the suit for partition is itself not maintainable. Since the petitioner is also one of the co owners and oral partition is pleaded by the 1st respondent/ plaintiff, the petitioner is necessary party to the suit.

Hence this court is of the view that this petition is liable to be allowed as the petitioner is also co owner/coparcener in order to resolve the dispute between the petitioner and the 1st respondent and he is liable to be impleaded in the main suit which is a suit in partition.

In the result, this petition is allowed. No costs.

Sd/-

Sub Judge,
Eraniel