

**ORDER ON I.A.No.I/2021 FILED BY PLAINTIFF**  
**UNDER ORDER VI RULE 17 R/W 151 CPC**

This application is filed by the Plaintiffs under Order VI Rule 17 r/w Section 151 CPC praying for permission to amend the plaint.

2. In the accompanying affidavit the Plaintiff No.1 has contended that the Defendant No.5 and one Dr. A. N. Raja Venkata Reddy are the adoptive parents of the Plaintiff No.1 and 2. The Defendant No.1 and 2 are the brother and Defendant No.3 is the sister of Dr. A.N. Raja Venkata Reddy who passed away on 19.12.2003. During the year 1986 he married to Defendant No.5. As per the wish of Dr. A.N. Raja Venkata Reddy, after his death, the Defendant No.5 adopted the Plaintiff No.1 and 2 under Adoption Deed and they are the legal heirs of Defendant No.5 and Dr. A.N. Raja Venkata Reddy. The Defendant No.3 also passed away on 29.8.2019, she was a divorcee and had no children.

The proposed amendment is needed for the complete adjudication of the dispute and it is necessary to avoid multiplicity of proceeding with respect to the Suit Schedule Property. The proposed amendment will not alter the nature of the Suit and hence no hardship, irreparable loss or injury would be caused to the Defendants if the proposed amendment is allowed. Hence, prayed for allowing the application on several other grounds.

3. The Defendant No.1 has filed objections to the said application contending that Dr. A.N. Raja Venkata Reddy died intestate on 19.12.2003 leaving behind his wife Smt. Hemamalini and his mother Smt. Gowramma to succeed to his properties allotted as per the Memorandum of Partition Deed dtd: 18.9.2005. the said properties were subject matter of suit in O.S.No.3773/2004 filed by Smt. Gowramma against Smt. Hemamalini and others. Smt. Gowramma died on 22.8.2006

leaving behind the Defendant No.1 to 3 herein to succeed her estate and as such they had come on record in O.S.No.3773/2004 as her legal representatives and contested the said suit. The Plaintiffs herein have filed an application under Order I Rule 10 CPC to come on record as parties in O.S.No.3773/2004 claiming to be adopted children of Smt. Hemamalini as per the Adoption Deed dtd:24.5.2008 as Defendant No.5 and 6 in the said suit. The Defendant No.1 to 3 have challenged the Judgment and Decree passed in O.S.No.3773/2004 before the Hon'ble High Court in RFA No.1531/2012 and the operation and execution of Judgment and Decree in O.S.No.3773/2004 was stayed on 12.11.2014 by the Hon'ble High Court. The Hon'ble Court has framed the issue casting the burden on the Plaintiffs to prove their alleged adoption. The present application filed by the Plaintiffs alleging that they are the legal representatives of the

deceased Smt. A.N. Saraswathi i.e., the Defendant No.3 is false and baseless and the alleged entitlement of the Plaintiffs as claimed in the application is imaginary and unfounded. Hence, prayed to dismiss the application.

4. Heard both the sides.

5. Basing on the above said facts, the points that arise for my consideration are:

1) Whether the Plaintiffs have made out a ground for permitting the Plaintiffs to amend the plaint as sought?

2) What order?

6. My findings on the above points is as under:-

Point No.1 : In the Negative.

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

### **REASONS**

7. **Point No.1**:- Upon going through materials

available on record, it is seen that the Plaintiff has come up with this suit for partition and separate possession of the suit property based on the adoption deed. According to plaintiff Defendant No.5 and one Dr. A. N. Raja Venkata Reddy are their adoptive parents As per the wish of Dr. A.N. Raja Venkata Reddy, after his death, the Defendant No.5 adopted the Plaintiff No.1 and 2 under Adoption Deed and they are the legal heirs of Defendant No.5 and Dr. A.N. Raja Venkata Reddy. The Defendant No.3 also passed away on 29.8.2019, she was a divorcee and had no children. Hence they are the legal heirs of the deceased. Hence The plaintiff wanted to introduce this in the pleadings.

8. On the other hand it is the contention of the defendant that Dr. A.N. Raja Venkata Reddy died intestate on 19.12.2003 leaving behind his wife Smt. Hemamalini and his mother Smt.

Gowramma to succeed to his properties allotted as per the Memorandum of Partition Deed dtd: 18.9.2005. the said properties were subject matter of suit in O.S.No.3773/2004 filed by Smt. Gowramma against Smt. Hemamalini and others. Smt. Gowramma died on 22.8.2006 leaving behind the Defendant No.1 to 3 herein to succeed her estate and as such they had come on record in O.S.No.3773/2004 as her legal representatives and contested the said suit. The Plaintiffs herein have filed an application under Order I Rule 10 CPC to come on record as parties in O.S.No.3773/2004 claiming to be adopted children of Smt. Hemamalini as per the Adoption Deed dtd:24.5.2008 as Defendant No.5 and 6 in the said suit. The Defendant No.1 to 3 have challenged the Judgment and Decree passed in O.S.No.3773/2004 before the Hon'ble High Court in RFA No.1531/2012 and the operation and execution of Judgment and

Decree in O.S.No.3773/2004 was stayed on 12.11.2014 by the Hon'ble High Court. The Hon'ble Court has framed the issue casting the burden on the Plaintiffs to prove their alleged adoption. The present application filed by the Plaintiffs alleging that they are the legal representatives of the deceased Smt. A.N. Saraswathi i.e., the Defendant No.3 is false and baseless and the alleged entitlement of the Plaintiffs as claimed in the application is imaginary and unfounded and seriously opposed the application.

9. Upon going through the materials available on record, it indicates that the order sheet dtd: 31.1.2020 goes to show that Plaintiffs herein on earlier occasion also wanted to introduce these facts by filing memo, for which my Learned Predecessor in Office has passed the following:

**ORDER**

***The Plaintiff has filed this suit  
for declaration stating that they are***

***entitled for 1/4th share in the Suit property on the ground that they are the children of Late A.N.Raja Venkata Reddy. But Defendants have denied the same and the deceased Defendant No.3 has also denied that Plaintiffs are the children of Late A.N.Raja Venkata Reddy. Now after the death of Defendant No.3 these Plaintiffs wants to come on record as a legal heirs of deceased Defendant No.3 along with Defendant No.1 and 2. When the Plaintiffs are claiming that they are children of Late A.N.Raja Venkata Reddy basing on adoption and when it is in dispute at this stage the memo filed by the Plaintiff cannot be taken into consideration and they cannot be brought on record. and therefore memo is rejected partly and however the contention that Defendant No.1 and 2 are the legal heirs of Defendant No.3 stated in the memo is accepted since the Defendant No.1 and 2 have no objection for the same.***

***Amendment of the Plaintiff by  
25-02-2020.***



10. Looking at the case papers, it indicates that this matter is pending since 2009, much water has flown under the bridge. Apart from that, it is pointed out by the Learned Counsel for the Defendant that there was one more suit pending adjudication between the same parties for the same property in O.S.No.3773/2004. In the said suit also the Plaintiffs herein wanted to introduce themselves as the legal representatives of deceased Gowramma by filing application under Order I Rule 10 of CPC that they are the adopted children of Smt. Hemamalini. The said suit was disposed off by Judgment dtd: 11.7.2012, against which matter went up to Hon'ble High Court in RFA No.1531/2012, wherein the Hon'ble High Court pleased to stay the operation of Judgment. As rightly pointed out by the Learned Counsel for the Defendant, when the very same subject matter is pending adjudication, before the higher Courts that

too when it is seized by the Hon'ble High Court by granting stay order, it is not just and proper to allow the Plaintiffs to introduce the said facts in the pleadings of this case, which is nothing but allowing ,for second round of litigation afresh by giving entry from the back door. When the very same subject matter between the same parties is pending adjudication before the Appellate Courts, parties are at liberty to seek remedy there itself. As rightly pointed out by the Learned Counsel for the Defendants the decision in RFA No.1531/2012 on the same subject matter is binding on this Court also. Hence, there is no point in allowing this application that too when the very same subject matter is seized by the Hon'ble High Court of Karnataka. Added to that, this case is already reached the stage of cross-examination of Plaintiffs. Hence, I did not find any reason to allow the Plaintiffs to amend the pleadings. Hence, I

answer Point No.1 in the Negative.

11. **Point No.2**:- In view of answering Point No.1 in the Negative, I pass the following:

**ORDER**

The I.A No.I/2021 filed by the Plaintiffs under Order VI Rule 17 r/w Section 151 CPC is dismissed.

Call on 25.03.2022.

**(K.M. Rajashekar),**  
XXVIII ACC & SJ., B'luru.