

29-09-2023.

Plaintiff By Sri.DMP Adv.

Defendant No.1 and 2 By Sri.CPP Adv.

Proposed Def No.3 to 6 By Sri.CPP Adv.

For orders on IA No.Vi and VII.

i.	Provision under which the application is filed	:	U/o 1 Rule 10 of CPC U/o 32 Rule 3 of CPC
ii.	Relief sought for	:	IA No.VI seeking to implead parties. IA-VII seeking to appoint the guardian for the minor defendant
iii.	The date on which the application is filed	:	26-07-2023
iv.	Number of the application	:	IA No.VI and VII
v.	The date on which the objections are filed by different opponents	:	20-09-2023.
vi.	The date on which the orders were passed on the said application	:	29.09.2023

// ORDER ON IA No.VI and VII //

That when the case was posted for final arguments these applications are filed by the plaintiff U/O 1 Rule 10 of CPC and u/o 32 Rule 3 of CPC, to implead the defendant No.3 to 6 and appoint the guardian to the minor proposed defendants, in this suit. The applications are accompanied by the affidavit of the plaintiff. The proposed defendant No.3 to 6 after service of the notice have appeared through advocate and filed objections.

2. Heard arguments on the applications. The following point arises for my consideration:

**“Whether the proposed defendant No.3 to 6
are to be impleaded in this suit?”**

3. My answer to the above point is in the affirmative for the following:

// REASONS //

4. The plaintiff has filed this suit for partition and separate possession of her share in respect of the suit property. The plaintiff claims to be the wife of late Doddappa the brother of the defendant No.1 and 2. The defendants have appeared and filed the written statement. In their written statement they have denied the very relationship of the plaintiff with Doddappa. They contend that said Doddappa was married to Mallamma and had three children by name Hanumanthappa, Sridhail and Manjappa. When the matter was posted for final arguments, the present application has been filed by the plaintiff to implead the said wife and children of Doddappa as the defendants, since they claim to be having rights in the suit properties. The proposed defendants have filed objections stating that the very suit of the plaintiff is not maintainable in law. That thereby the present applications are also liable to be rejected.

5. Under the provisions of order 1 Rule 10(2) of CPC, the court at any stage of the proceedings, either upon or without the application of either party, order that the name of any person who ought to have been joined as party or whose presence is necessary to effectually adjudicate the matter in issue, be added.

6. A necessary party is one, whose presence is absolutely necessary and without whose presence the issue cannot be effectually and completely be adjudicated upon and decided between the parties. A proper party is one, whose presence would be necessary to effectually and completely adjudicate upon the

dispute. Where the addition of the parties is necessary to make full and complete adjudication of the dispute, such party could be impleaded.

7. The present suit is filed for partition, by the alleged widow of Doddappa. The plaintiff claim to be the joint owners of the suit properties, with the defendant No.1 and 2. The proposed defendant No.3 to 6 are said to be the widow and children of same Doddappa. Thus to decide the suit, their presence is necessary. Because it has to be decided as to who is the wife of Doddappa and thus have rights over the suit properties. Thus when the proposed defendants are also having rights over the suit properties, their presence in this suit is necessary, and they are proper party to the suit. Because all those persons who have right over the suit properties, are to be heard before the order is passed.

8. Thus, in the interest of justice the proposed defendant No.3 to 6 are to be impleaded in this suit, as the defendant No.3 to 6 in order to properly and finally adjudicate the issues involved. The objection as to who is the widow of deceased Doddappa is kept open for decision in the suit. In view of the above discussions, this court is of the opinion that the proposed defendant No.3 to 6 are proper party to this suit and their presence is essential for the proper and effectual adjudication of the issues involved in this suit.

9. In the written statement of the defendant No.1 and 2 all the children of Doddappa are shown to be majors. But in IA No.VI and VII, the defendant No.6 is shown as minor. Thus the defendant No.3 is to be directed to furnish age proof of the defendant No.6.

Hence I answer the point under consideration in the affirmative.
Accordingly I, proceed to pass the following:

//O R D E R //

The application filed by the plaintiff i.e., IA No.VI u/o 1 Rule 10[2] CPC is allowed. The parties named in IA No.VI shall be impleaded as the defendant No.3 to 6.

The plaint be amended accordingly. The IA No.VII is kept in abeyance till the age proof of the defendant No.6 is furnished by the defendant No.3.

Call on for amended plaint by

**Senior Civil Judge & JMFC
Kusthagi.**