

(2010) 03 KAR CK 0164

In the Karnataka High Court

Case No : Writ Petition No's. 734-737 of 2009

Smt. Sharada Gopala Singh, Sri G. Mohan Singh, Sri G.
Hema Chander Singh and Sri M. Chandra Singh

APPELLANT

Vs

Sri M. Diwakar Singh

RESPONDENT

Date of Decision : 29-03-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10 (2)

Citation : (2010) 03 KAR CK 0164

Hon'ble Judges : Ravi Malimath, J

Bench : Single Bench

Advocate : H. Devendrappa and Assts, for the Appellant; H.S. Chandraiah, for the Respondent

Final Decision : Allowed

Judgement

Ravi Malimath, J.—In the suit of the petitioners to declare that the Will dated 14.5.1998 as null and void and for partition, an application filed under Order 1 Rule 10(2) of CPC seeking amendment was rejected by the Trial Court. Hence, the present petitions.

2. The learned Counsel for the petitioners contends that the persons sought to be impleaded are the children of the 1st wife of the husband of the lat plaintiff. It is submitted that the 1st plaintiff being a second wife was not aware of the existence of the 1st wife and the children borne, out of the marriage. Hence, the application is made in view of the fact that they too have an interest in the schedule property.

3. Counsel for the respondent is absent. In the circumstances, I have heard the counsel for the petitioners.

4. The trial Court while considering the application rejected the same on the ground that the children of the first wife are not necessary parties to the suit, since the marriage is stated to be a void marriage. The reasoning recorded by

the Trial court is unsustainable.

5. It is the specific case of the petitioners that the persons sought to be impleaded are the children of the 1st wife and the 1st plaintiff being a second wife, all of them may have a right over the suit property. Therefore, they would be necessary parties for the just and final adjudication of the suit. In the absence of the applicants, the Trial Court would not be in a position to judiciously decide the suit.

6. For the aforesaid reasons, the order dated 20.2.2007 passed by the learned City Civil Judge, Bangalore, on I.A. No. 2, in O.S. No. 2530/04 is set aside. I.A. No. 2 filed by the petitioners is allowed.

7. Petitions disposed off accordingly.