



R.C.S.No.24/2021

Order below Exhibit-55's application.

1. Present application came to be filed under order-1 Rule-10(2) of Civil Procedure Code. (In short referred herein as C.P.C. for shake of brevity) to join purposed party as defendant no.2 to original suit.
2. In this application, it is stated that purposed defendant is daughter of Tulsidad Madhavdas Agravat (existing defendant). It is also stated that, this suit being suit for partition, present purposed defendant's interest and share is included in the subject-matter. It is also stated that, when there is suit for partition, daughter of Tulsidas Madhavdas Agravat (existing defendant) is to be considered as first class legal heirs. It is stated that, in this suit if present purposed party is not joined as defendant, then her right will be submerged. Stating all these grounds, prayer is advanced to join purpose party as defendant no.2 in this suit.
3. This application was kept for hearing and reply. Ld.Advocate for the plaintiff Mr.V.C.Jani produce his objections against this application at exhibit-59. Along-with this objections, he also passed a pursis to the effect that, his objections may be considered as his arguments. In this objections he has stated that, present suit is filed

for revenue survey no.26/paiki's land only. He also stated that Tulsidad is alive. Hence, there is no need for the plaintiff to join all legal heirs of the defendant Tulsidas. It is also stated that only after death of Tulsidas all legal heirs can enter into the suit as legal heirs. It is also stated that another R.C.S.No.177/2020 is filed by Kishorbhai Tulsidas. In that suit also present party is not joined as party. In that suit also, present party is still as purposed party defendant no.11. It is also stated that in R.C.S.No.177/2020, there is dispute with regard to revenue survey no.26/paiki's land only. It is also stated that, in that suit also Tulsidad has not joined any legal heirs as party.

3.1. It is also stated that, in present suit there is prayer by plaintiff with regard to survey no.26/paiki. This survey no.has nothing to do with defendant Tulsidas. It is also stated that Tulsidas's name is only mutated in the revenue record. Again and agains revenue survey no.26/paiki is referred to say that, present purposed party has no right to be joined in the present suit. It is also stated that, if present purposed defendant is fair then, present plaintiffs could have been joined in R.C.S.No.177/2020. Present plaintiffs are not joined in that suit. It is also stated that, in this suit one person namely Vallabh Avachar Charola approached this Court to join him as party. Which was rejected. Against that order, SCA was also preferred. Which is also rejected by Hon'ble Gujarat High Court. Lastly, it is stated that, transfer petition is filed to transfer all the suits

no.177/2020,60/2022,190/2021 and present suit, along-with CMA No.62/2022. Thus, it is stated that, present application may be rejected as present purposed defendant is neither proper nor necessary party to this suit.

4. For existing defendant, endorsement is marked upon this application to the effect that, existing defendant has no objection if present application is allowed.
5. Ld. Advocate for purposed defendant Mr.H.K.Panchal argued that, as per pleadings of the plaintiffs, suit is filed for partition of ancestral property. He also stated that, it is case of plaintiffs that, suit property bearing survey no.27/2 is ancestral property. He also stated that, Tulsidas got this property from his predecessor-in-interest namely Madhavdas Anandram Agravat. It is also stated that, present purpose party is daughter of existing defendant and thus she being first class legal heirs, she has all right, interest and share in the suit property. He also stated that, when there is right established in the suit property by way of inheritance, present party may be joined as defendant. He also stated that, if present party is joined as party then plaintiff's right is not going to prejudice in any manner. He also referred to the revenue entry no.8612, dt.23.08.2017. Having reference to this entry he has stated that present party is proper and necessary party for just decision of this suit. It is also stated that, in this suit as right of purposed party is established in suit property, she is

necessary party. Lastly, he relied upon following judgement to allow his application.

a) Ramchandra Chaudharimal Vs. Heirs of deceased Nanakram 1994(1) G.L.H.(U.J)14.

6. Having heard both sides, this Court has gone through record and proceedings of the suit. Be it stated that in plaint, plaintiffs prayed as under.

a) અમો વાદીઓની વડીલોપાર્જિત મિલકત જેનું વર્ણન દાવા અરજીના પારા-૨માં કરેલું છે તે જમીન સર્વે નં.૨૭/૨, હે.૩-૨૭-૮૦ છે તે જમીનનો શાંત, ખાલી અને નિર્ભીક કબ્જો પ્રતિવાદી જાતે સુપ્રત કરી આપે તેવો આદેશાત્મક મનાઈ હુકમ અમો વાદીના લાભમાં અને પ્રતિવાદીની વિરુદ્ધ ફરમાવવા ન્યાય કરવા અરજ છે.

b) અમો વાદીની દાવા અરજી પારા-૨ વાળી ખેતીની જમીન અરવે નં.૨૭/૨, હે.૩-૨૭-૮૦ અમો વાદી સહમલિક છીએ તેવું વિજ્ઞાપનથી અમો વાદીના લાભમાં અને પ્રતિવાદીની વિરુદ્ધ જાહેર કરવા હુકમ કરવા અરજ છે.

c) અમો વાદીનો વડીલોપાર્જિત દાવા અરજીના પારા-૨માં જણાવેલી ખેતીની જમીન સર્વે નં.૨૭/૨ તથા ક્ષેત્રફળ હે.૩-૨૭-૮૦ પ્ર.આ હાલ પ્રતિવાદીના નામે ચાલતી હોય તેઓ રેવન્યુ રેકર્ડનો ગેરલાભ લઈ કોઈને વેચાણથી, વિલથી, બનતી, સોદાથી, સાટાથી કે મુખત્યારનામાથી વેચાણ કે ટ્રાન્સફર કરે કે કરાવે નહીં તેઓ કમી મનાઈ હુકમ અમો વાદીના લાભમાં અને પ્રતિવાદીની વિરુદ્ધ ફરમાવવા ન્યાય કરવા હુકમ કરવા અરજ છે.

d) અમો વાદીને મળવાપાત્ર તમામ દાદ અપાવવા અરજ છે.

e) આ દાવાનું ખર્ચ પ્રતિવાદી પાસેથી અપાવવા અરજ છે.

7. Suit-property's description is narrated in para.2 of the plaint as below.

- (૨) અમો વાદીનો વડીલોપાર્જિત મિલકત મોજે.સ્વાપર તા.મોરબી ખાતે આવેલી છે જેમાં ખેતીની જમીન છે જેનો સ.નં.૨૭/૨ તથા ક્ષેત્રફળ હે.૩-૨૭-૮૦ પ્ર.અ. છે આ જિમ હાલ ખાતા નંબર ૨૭થી આ કામના પ્રતિવાદીના એકના નામે ચાલે છે જેની ચતુર્દિશા નીચે મુજબ છે.
- પૂર્વ: રાસીદડનો મારગ આવેલ છે.
- પશ્ચિમ : સ.નં.૨૭/પૈકીની જમીન આવેલ છે.
- ઉત્તર: સ.નં.૨૮વાળી જમીન આવેલ છે.
- દક્ષિણ: સ.નં.૨૭/પૈકીની જમીન આવેલ છે.

8. This application calls for reproduction of O.1,R.10(2).

R.10. Suit in name of wrong plaintiff. (1)* (2)Court may strike out or add parties.—**The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

9. At this juncture, it is also necessary to mention here that doctrine that plaintiff is dominus litus of suit always subject to basic exception. Exception is whether Court comes to conclusion that presence of party necessary before Court for proper and final determination of matter

in controversy. Discretion of court not dependent upon consent of plaintiff. Merits of claims are of no consequence. Court at this stage not concerned with validity or otherwise of suit but presence of that party if necessary before court. Court could permit impleadment of such party to avoid prejudice to any of parties to suit. Whatever may be rival claims of the parties in the suit, a party should claim the ownership in relation to the subject matter of the suit and prima facie shows documents in support thereof could normally be treated to be a party whose presence before the Court would be proper of settling the controversy in the suit. The merits of the claims are of no consequence and the Court at this stage is not concerned with the validity or otherwise of the suit but the presence of that party if necessary before the Court, the Court could permit implement of such a party to avoid prejudice to any of the parties to the suit and to give a judgment which would fully and finally decide on the rights of the parties and would help in avoiding multiplicity of the litigation.

10. After having heeded to the statutory provision contained in O.1, R.10 of C.P.C., this Court would like to say that present suit is filed for partition and declaration with regard to revenue survey no.27/2. Same is stated in the plaintiff's plaint in prayer clause. Thus, dispute of the plaintiffs with regard to suit being for revenue survey no.26/paiki is not going with pleadings of the plaintiff. Thus, this objection raised by plaintiff is against their

pleadings itself and not tenable.

11. Be it noted that, in this suit it is specific averment of the plaintiffs that, originally suit property was in name of Late Madhavdas Anandram Agravat. He died leaving behind legal heirs namely (a) Jivandad (b) Shivramdas (c) Khimdas (D) Tulsidas (e) Prabhaven and (f) Dayaben. Out of these legal heirs Jivandas existing defendant was eldest one. It is stated plaintiffs are legal heirs of said Late Madhavdas Ananddas Agravat. It is also stated that in said ancestral property, all plaintiffs have right, interest and share.
12. It is required to be noted that, plaintiffs them-self are claiming that suit property is ancestral property. It is also required to be noted that, suit property is mentioned as revenue survey no.27/2 of Ravapar, Ta.morbi. Thus, how revenue survey no.26/paiki is mentioned in objection, is not clarified by plaintiff side. Thus, this objection is not tenable at all.
13. It is not in dispute that, present purposed defendant is daughter of Tulsidas Madhavdas Agravat (existing defendant). Be it stated that, daughters are now considered as co-sharer in the ancestral property which is held by her father by birth. To put it differently, daughters now acquire share in ancestral property by birth. it is well settled law that in a suit for partition, all the heirs are entitled for share in the property including daughters, irrespective of their marital status. **Keeping in mind the**

Hindu Laws, the son or daughter automatically obtains his/her right in the ancestral property. The right to acquire an equal share in the property is attained as soon as the son or daughter takes birth in the family.

14. In suits relating to property, in order that a third party may be impleaded, they should have direct or legal interest in the subject matter of the litigation as distinguished from mere commercial interest. Legal interest is interpreted to mean that the result of the suit affects the third party legally. As this Court has discussed earlier, present purposed party being daughter of Tulsidas Madhavdas Agravat has direct and legal interest in the subject matter. It is also required to be noted that, when there is claim by plaintiffs themselves that suit property is ancestral property, then present purposed defendant is necessary party for just decision of the suit. Be it noted that, by revenue entry no.8612, dt.23.12.2017, name of the present purposed third party also came to be mutated in the revenue record. Which also indicates that, present purposed defendant has direct and legal interest in the suit property.

15. Scope of necessary party is explained by Hon'ble Apex Court in case of Savitri Devi Vs. District Judge Gorakhpur & ors reported in AIR 1999 SC 976. In this Judgment at para. 9 Hon'ble Apex Court held that "9.Order I, Rule 10 C.P.C. enables the Court to add any person as party at any stage of the proceedings if the

person whose presence before the Court is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of multiplicity of proceedings is also one of the objects of the said provision in the Code.” This

judgment clearly establishes that if Court comes to conclusion that any party's presence is necessary for just & proper decision of this suit Court can order to add them as party to the suit. Having read this ratio in consonance with facts & circumstances of the case I am of the opinion that purposed party named as Champaben Tulsidas Agravat is necessary party. In this case addition of purposed defendant is not going to nature of the suit. This suit will remain of the same nature as it is. This aspect also helps the Court to decide this issue.

16. It is also required to be noted that only because CMA is pending before Hon'ble District Court, will itself not preclude this Court in deciding such application. Unless proceedings of this case is stayed by Hon'ble District Court. Hence, submission of the plaintiff side with regard to CMA is pending before District Court will automatically lead to rejection of this application is not tenable at all,

17. In view of above-mentioned provision of law and ratio laid down by Hon'ble Supreme Court and various High Court in this regard, this Court of the opinion that in the present suit purposed party is necessary party and if she is joined as party no prejudice would be caused to

plaintiff. Further, looking to concept of avoiding multiplicity of litigation, this application deserves to be granted. Thence, in the interest of justice, following order is passed.

ORDER

1. Application is hereby allowed.
2. Proposed party **Champaben Tulsidas Agravat** is hereby allowed to joined as defendant no.2 to the original suit.
3. Plaintiff is hereby directed to amend plaint accordingly within time stipulated under O.6, R.18 of Civil Procedure Code & to produce amended plaint along-with copy of all defendants.
4. Copy of amended plaint to be served on newly joined defendant.

Order pronounced in open court today.

Morbi.

Date :09.09.2022

(Vikram Karsanbhai Solanki)

2nd Additional Senior Civil Judge.

Morbi.

Judge Code : GJ-01099