

Order below Exh.75 in Special Civil Suit No.63/2020
(CNR No.MHSN150013092020)

1. Perused the application and say filed by the plaintiff below Exh.81. Gone through record. Heard both the parties at length.
2. Present application is filed by third parties namely Rataji Ramchandra Chavan stating that present suit is filed by the plaintiff against defendants for partition of the suit properties by metes and bounds. According to the third party, the plaintiff in the present suit is his real father and defendant Nos.1 to 4 are his real uncles and defendant Nos.5 and 6 are his real aunts.
3. According to the third party, now the plaintiff who is his father is very old aged person and therefore he is not able to think rationally. It is further contended that, the step brother of third party namely Sidheshwar Chavan is trying to take disadvantage of ill-health of the plaintiff and is trying to arrive at illegal compromise between the parties. According to third party, he being real son of the plaintiff, has right title and interest in the suit properties and the suit being filed for partition, it is just to add him as a necessary party to the present suit. Hence, it is prayed to add the third party as defendant No.7 in the array of the plaint.
4. Plaintiff has resisted the application vide his say at Exh.81 stating that, earlier the plaintiff has filed the suit for partition and possession of his share in respect of genealogy of co-parceners of his branch. Therefore, as the plaintiff is presenting his branch, third party is not necessary party to the present suit. It is stated that, though the plaintiff is trying to compromise the dispute along with remaining defendants, the plaintiff does not intend to make partition of the properties standing in his branch. Lastly, it is stated that, considering

all above aspects third party is not necessary party and he has no *locus-standi* to file the present application. Hence, it is prayed to reject the application.

5. After hearing the arguments from both the sides and prima facie documentary evidence placed on record, following points arise for my determination and I have recorded my findings on them for the reasons to follow:-

Sr.No.	Points	Findings.
1.	Whether presence of third party is required for the purpose of complete adjudication of the present suit ?	In the affirmative.
2.	What order ?	As per final order.

REASONS

As to point No.1 :-

6. In so far as above point is concerned, it is for the third party to show as to how he is necessary party to the present suit and his presence is required for complete adjudication of the present suit.

7. In that context learned advocate for third party Shri. Dugam has vehemently argued that, the third party is real son of plaintiff and as the plaintiff himself has filed suit for partition and separate possession stating that, the suit properties were held by common ancestor, the plaintiff has right and interest in the suit properties. Hence, it is prayed to allow the application. On the other hand, learned advocate for plaintiff Smt. Pawar has argued that the third party is not at all concerned with the present suit. According to her, the plaintiff and defendant Nos.1 to 6 are real brothers and sisters and the plaintiff has prayed for partition of his share in respect of his

branch only. Therefore, according to her, though the third party is real son of the plaintiff, he is not concerned with the present suit. Hence, it is prayed to reject the application.

8. Before embarking on the merits of the application, it is worth here to state that as per provisions of Order 1 Rule 10 sub-rule (2) of the Code of Civil Procedure, the Court has power to add or strike out parties 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.

9. In that context and considering the pleading, it is required to see whether third party is necessary or proper party to the present suit. The present suit is filed by plaintiff for partition of the suit properties by metes and bounds. In para 2 of the plaint it is stated that, the properties described in para 1-A of the plaint had been acquired by the common ancestor namely Rama Hari Chavan by virtue of registered gift-deed dated 17-07-2019 and property described at Sr.No.8 was acquired in his name for the purpose of the joint family and from the income of joint family. It is not in dispute that the common ancestor namely Rama Hari Chavan died intestate and the suit properties came to the share of plaintiff and defendants by succession.

10. Thus, considering the pleadings in the plaint, prima-facie it becomes clear that, the plaintiff is claiming the relief of partition and separate possession as per the provisions of Hindu Succession Act. Admittedly, the third party namely Rataji Chavan being son of the plaintiff, is also grand-son of the common ancestor namely Rama Hari Chavan. In view of provisions of Section 6 of Hindu Succession Act, every person born in the family becomes co-parcener in the said family on the moment of his birth and he incurs all the rights and the

liabilities in the properties of the joint family. Undisputedly, the plaintiff has come up with the specific case that the suit properties are joint family properties of himself and defendants. Record also reveals that, after the death of defendant No.2 Kashinath Chavan, his legal heirs are brought on record as necessary parties to the present suit. It is not in dispute that the third party is real son of plaintiff. If that being so, as stated above, by birth the third party gets rights and interest in the joint family properties. Hence, considering these aspects, as the third party is one of the co-parceners of the joint family, his presence is necessary for effectual final adjudication of the suit. I, therefore, record my finding to point No.1 in affirmative.

As to point No.2 :-

11. In view of my finding to point No.1, the application deserves to be allowed and no prejudice would be caused to plaintiff, if the third party is added as a necessary party for the aforesaid reasons. Hence, in the result, in answer to point No.2, I pass the following order :-

ORDER

1. Application is allowed.
2. Plaintiff is directed to add the third party namely Rataji Ramchandra Chavan as defendant No.7 in the present suit as a necessary party.
3. Matter to proceed accordingly.

Vita.

Date:- 05.04.2021

Sd/-xxx

(A.N.Kulkarni)

Civil Judge Senior Division, Vita.

CERTIFICATE

I affirm that, the contents of this P.D.F. file Order are same, word to word, as per the original Order.

Name of Stenographer : Mr. J. R. More (Grade-II)

Court : Civil Judge Senior Division, Vita.

Date : 05.04.2021

Judgment signed by the : 05.04.2021
Presiding Officer on

Judgment uploaded on : 05.04.2021