

ORDER BELOW EXH.146 IN R.C.S.NO. 215/2004

- 1) Perused application and say. Heard learned counsel appearing for applicant and plaintiff. Perused record and proceeding.
- 2) Present application filed by applicants under Order 1 Rule 10 of C. P. C. for implementing themselves as a party defendant in this suit. It is the contention of applicants that plaintiffs have not given true and correct genealogy. In the instant suit plaintiffs have not impleaded heirs of Kisansing who was real brother of Udhavsing and their common ancestor was Ganpatsing. Kisansing had son namely Lalsing, Bhagwansing, Shankarsing and Madhavsing. Lalsing had a son namely Vithalsing. Applicants are the heirs of said Vithalsing. They are having their indefeasible right in the suit property. Therefore, applicants being the heir of late Kisansing are necessary party to decide this dispute in its entirety. Thus, applicant prayed for allowing this application.
- 3) Plaintiff resisted this application by contending that though applicants have sufficient time to file application, they failed to file present application at earlier stage when they filed application vide Exh.115 and 134. Their application is barred by limitation. Contents of their application are not true and correct. Only to protract hearing of this suit present application has been filed.
- 4) On perusal of record and proceeding, it appears that plaintiffs have filed this suit for partition, separate possession of their share by metes and bounds and for perpetual injunction. Present applicants

come before the Court with a theory that they are also successor of their common ancestor Ganpatsingh who had three sons namely kisansingh, Gopalsingh, Udhavsingh. In the instant suit plaintiffs have given genealogy of late Uddhavsingh's family only. The plaintiffs also affirmed the status of the property as ancestral.

5) Considering this aspect there is substance in the contention of applicants. Moreover, identical application containing name of applicant was filed vide Exh.115 and 134 for same relief. Application Exh.115 contains name of these applicants also. However, as said application did not contain signature of present applicants, therefore, said application allowed only to the extent of those applicants who had signed it. Now, by this application, applicants rectifying their said mistake. As the previous application has been allowed, present application deserves to be allowed. However, it is necessary to compensate the plaintiffs for the delay caused on the part of applicants to file this application. Hence, following order.

ORDER

- 1) Application Exh.146 is hereby allowed subject to cost of Rs. 2,000/-
- 2) Plaintiff to carry out necessary amendment and to file amended plaint on record.

sd/xxx

Date : 26/04/2014

(R. V. Jagtap)
Civil Judge, Sr.Division, Shrigonda

