



ORDER BELOW EXH.30 IN R.C.S. NO.437/2020.
(CNR : MHAH250013522020)

The present application is filed by third party for adding as a party in the present suit as per Order I Rule 10 of the Code of Civil Procedure.

2. The present suit is filed for simplicitor injunction. As per the contention, applicant No.1 and 2 are the legal heirs of deceased Vithoba Dere. Similarly, applicant No.4 is the daughter of applicant No.1. So their names are recorded in the record of right as per the mutation entry No.1280. RCS No.31/1987 was filed for the partition of the suit property and other properties. In that suit court was passed the decree and Reg. Dkt. No.95/1995 and 55/2009 was filed for partition of the suit property along with other property. So as per applicant, both the pending proceeding, the ancestral properties are not partitioned till today. They further submitted that RCS No.97/2009, 207/2009 and 225/2009 are pending in the Parner Court. So in such situation, applicant and the parties in the present suit are the necessary parties in the present suit. It is necessary to add the party for the proper adjudication of the suit. If they are not added as the party, then their legal right will be defeated. So prayed for add as party to the suit.

3. Plaintiff has filed the say on Exh.32 and submitted that plaintiff No.2 had executed sale-deed in respect of the

suit property in favour of plaintiff No.1 in 2003. To that sale-deed applicant No.1 was present as a attesting witness. Applicant Chandrakant and his father entered into the compromise in RCS No.50/1995. Mother of applicant No.3 has voluntarily relinquished her right over the suit property. Applicant No.4 is the daughter of applicant No.1, but she is not entitled for the share as per the amendment in Hindu Succession Act. Plaintiff further submitted that after decree passed in RCS No.31/1987 plaintiff and defendant filed R.D. No.50/1995 has filed in that darkhast, compromise has been executed. As per the compromise, defendant No.1 and 2 get their share. But, for the legal necessities both the defendants have executed sale-deed in favour of plaintiff No.2. After that both the defendant had never take any objection to the legal possession of plaintiff No.2. Despite of the partition and compromise before the revenue officer, applicant No.2 and his father Vithoba Dere has executed sale-deed in favour of third party. So, applicant has committed fraud by taking benefit of his own wrong. So prayed for rejection of the application with cost.

4. Perused the application and say. Heard both the parties. As per the contention of the applicant, suit property is their ancestral property and that property is not divided. They are the co-parcener in the ancestral property. *Prima-facie* from all the documents it appears that the suit property along with other property are not partitioned. Civil proceedings are

pending in the court regarding the suit property and other properties claimed by the plaintiffs and the present applicant. From all documents, *prima-facie* it is seen that applicant are the necessary parties to the suit. As per the Order I Rule 10 of the CPC the necessary party are the party without which proper adjudication of the suit is not possible. So applicant No.1 to 4 *prima-facie* seems to be necessary parties. The right are involved in the suit property. To adjudicate right of all the parties and to avoid multiplicity of the proceeding, it is necessary to involve the applicant in the present suit as a party. To sum up the discussion, I pass the following order ;

ORDER

1. Application (Exh.30) is allowed.
2. Applicant No.1 to 4 be added as a party to the suit. Necessary amendment be carried out within the period of limitation.

Date : 18.07.2022

Sd/-
(S. C. Salvi)
Jt. Civil Judge Junior Division,
Parner.