



ORDER BELOW EXH.38 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 of the applicants, applicant No.1 and 2 are the legal heirs of Rajaram Raoji Dere whose name was in the 7/12 extract in the column of other rights. So they are legal heirs of Rajaram Raoji Dere as per Hindu Succession Act. They further submitted that 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 both the pending proceedings, ancestral property is not partitioned till today. As per the order of Sub-Divisional Officer, Shrigonda-Parner there was a stay to the execution proceeding in Reg.Dkt No.95/1995 and 55/2009. Actual partition was not effected. 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.43 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 an attesting witness. Applicant Chandrakant and his father entered into the compromise in RCS No.50/1995. Plaintiff further submitted that after decree passed in RCS No.31/1987 plaintiff and defendant filed RCS No.50/1995 has filed in that darkhast, compromise executed. As per the compromise, defendant No.1 and 2 get their share. But, for the legal necessities both the plaintiff have executed sale-deed in favour of plaintiff No.2. After execution of sale-deed plaintiff No.2 is in possession of the suit property.

4. Plaintiff No.1 has paid loan of Senapati Bapat Patsanstha after execution of sale-deed. After that both the defendant and present applicant have 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. Despite of possession of the suit property, defendant and her relative had caused obstruction to the legal possession of the plaintiff. Mutation entry No.1280 was recorded without giving notice to the plaintiff on the basis of false affidavit. The present applicants have no right in present suit property. The present plaintiff has not claimed any relief from the present applicant.

So they cannot be necessary party to the suit. Only to create obstruction to the possession and to delay the proceeding, the present application is filed. So the application is not maintainable and prayed for rejection of the application with cost.

5. Perused the application and say. Heard both the parties. As per the contention of the applicant, suit property is their ancestral property and that properties are not divided. They are the co-parcener in the ancestral property. 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.38) is allowed.

2. Applicant No.5 and 6 be added as a party to the suit.
Necessary amendment be carried out within the period
of limitation.

Sd/-

(S. C. Salvi)

Date : 18.07.2022

**Jt. Civil Judge Junior Division,
Parner.**