



ORDER BELOW EXHIBIT 105 IN RCS No.92/2015

The present application is moved by the plaintiffs under order 1 Rule 10 of the Code of Civil Procedure (hereinafter for short CPC.)

2. It is the contention of the applicants that the present suit is instituted by the plaintiff for declaration of her ownership, mandatory and perpetual injunction. The suit property was acquired by deceased Narmadabai Vishwambar Sonone by a gift-deed. She was married to Vishwambar Kashinath Sonone. But as she was mentally ill and as she could not begot a child, Vishwambar Sonone had married with Kusum Vishwambar Sonone. The applicants are the children born from the wedlock of Vishwambar and Kusum. It is their contention that except the present applicants, there are no other legal heirs of deceased Vishwambar Kashinath Sonone. They have right, title and interest in the suit property after the death of Narmadabai. However, the plaintiff has not made them party in the present suit. Hence, the present application.

3. The plaintiff has strongly resisted the application by filing her say at exhibit 115. She has denied the contentions of the applicants. It is her contention that she is the daughter of Vishwambar Sonone. The suit property is entered in her name as owner after the death of her mother Narmadabai. The suit property is not ancestral property of the father of the plaintiff. The suit property was acquired by Narmadabai from her father Natthu Tukadaji

Bharakshe vide gift-deed dated 16.4.1980. As the suit property is not ancestral property of Vishwambar Sonone, the applicants or Kusum Vishwambar Sonone have no right, title or interest in the suit property. Therefore, it is not necessary to implead them as party to the present suit. Lastly, it is contended by the plaintiff that Narmadabai is not the real mother of the applicants. She is the real mother of the plaintiff. The suit property is entered in the name of the plaintiff as on today. The applicants have no right to claim interest in the property of deceased Narmadabai. Hence, it is prayed that the application be rejected with costs.

4. Heard the learned Advocates for both the sides. Perused the application, say and record of the case.

5. The present suit is instituted for a declaration that the plaintiff is the owner of the suit property along with a prayer for mandatory and permanent injunction. The record of the case shows that the suit was finally decided by my learned predecessor. However, in an appeal preferred before the Hon'ble Adhoc District Judge, the judgment and decree passed by my learned predecessor was set aside and suit was remanded for trial to this Court vide judgment dated 25.10.2019. If the contentions of the plaintiff in the suit are seen, it becomes clear that she is claiming ownership in respect of the property owned by her alleged mother i.e. Narmadabai Vishwambar Sonone. It is not in dispute that the suit property was initially owned by deceased Narmadabai Vishwambar Sonone. The plaintiff is claiming to be the daughter of deceased Narmadabai whereas the applicants are claiming to be children of deceased Vishwambar Sonone from his second wife. According to applicants, deceased

Narmadabai was mentally ill and died issueless. The question whether the plaintiff is the daughter of Vishwambar Sonone and Narmadabai Sonone is to be decided during trial in the present suit. In view of section 15 sub section 1 of the Hindu Succession Act the property of deceased woman dying intestate devolves upon her sons, daughter (including sons and daughters of her predeceased son) and husband. Secondly, it devolves upon heirs of husband. In the present case, the plaintiff has contended that the applicants are illegitimate children of Vishwambar Sonone as his marriage with Kusum Sonone was solemnized during the lifetime of deceased Narmadabai. As such, this question will also require consideration during trial.

6. Considering the nature of the present suit it is necessary that all persons who are claiming or having interest in the suit property ought to be parties to the present suit. It is not in dispute that Vishwambar Sonone was the husband of deceased Narmadabai. Further it is also not in dispute that the suit property was owned by deceased Narmadabai. Considering this fact I am of the view that the alleged heirs of deceased Vishwambar Sonone are necessary parties to the present suit. The question whether the applicants are legitimate or illegitimate children need not be decided at this stage summarily. Prima facie they appear to be heirs of Vishwambar Sonone. Therefore, I am of the view that they are necessary parties to the present suit.

7. The learned Advocate for the plaintiff has relied on the judgment of Hon'ble Bombay High Court in **Jagannath Khanderao Kedar and others Vs. Gopinath Bhimaji Kedar and others, 2022 (6)**

Mh.L.J. 277. In this case the Hon'ble High Court had held that the plaintiff is *dominus litis* which means that the plaintiff is the master of his suit. He cannot be compelled to wage a legal battle against a person against his will. However, the Hon'ble High Court further held that if there is a compulsion of law which would necessitate the presence of third party, either as a necessary party or proper party, the aforesaid rule will not apply. In this case the suit was for partition and separate possession. An application was moved by third party applicants on the ground that they had interest in the suit property in view of the agreement of sale. In view of aforesaid facts and the principles of law, the Hon'ble High Court held that third party applicants have no interest in the property merely because they hold an agreement of sale in their favour and accordingly their application came to be rejected.

8. In the present suit it is not a case where the applicants do not have an interest in the suit property. I have already come to an conclusion that the applicants are necessary parties in the present suit. In view of the said conclusion, the judgment relied upon by the learned Advocate for the plaintiff is of no help to him. Infact, the judgment clearly says that whenever a party is necessary for the decision of the suit the principle of *dominus litis* will not apply.

9. The learned Advocate for the applicants has relied upon the judgment of Hon'ble Supreme Court in **Omprakash and others Vs. Radhacharan and others 2010 (1) ALL MR 453**. In this case, the question before the Hon'ble Apex Court was whether the devolution of self-acquired property of a female Hindu will be according to sub section 1 of section 15 or sub section 2 of section 15 of the Hindu

Succession Act. In this case, the female Hindu had died intestate leaving behind self-acquired property. Further after the death of the husband of the female Hindu she was driven out of her house by her in-laws and she stayed at her matrimonial home for her lifetime. The contest for her properties was between her mother and heirs of her husband's sister. In this factual background, the Hon'ble Apex Court held that as the property was self-acquired property of the deceased female Hindu, the provision of section 15(1) of the Hindu Succession Act will apply. In the case at hand the suit property is the self-acquired property of deceased Narmadabai. Therefore, in this case also section 15 sub section 1 will apply. Thus, the judgment relied upon by the learned Advocate for the applicants is squarely applicable to the facts of the present case. But the question whether the plaintiff is the daughter of deceased Narmadabai or whether the applicants are entitled to the suit property being heirs and husband of deceased Narmadabai will be decided during trial.

10. In view of the aforesaid discussion, I conclude that the applicants are necessary parties to the present suit and in their absence no effective decree can be passed. As such, the present application is liable to be allowed. Hence, the order.

ORDER

1. The application is allowed.
2. The applicants shall be impleaded as party defendants to the present suit.
3. The plaintiff shall carryout necessary amendment in the plaint by impleading the applicants as party defendants to the suit.

4. The necessary amendment shall be carried out on or before next date and amended plaint be filed on record.
5. As the third party applicants have appeared on their own in the present suit, the issuance of suit summons to them is waived.
6. After their addition as party defendants in the present suit the third party applicants shall file their written statement within 30 days.
7. Costs in cause.

Date : 25.11.2022.
Place : Akot.

Bhanupratap B. Chouhan.
Joint Civil Judge (Junior Division.)