

**ORDER BELOW EXH. 159**

(Passed on 16<sup>th</sup> of December, 2020)

1. Present application is filed by defendant nos. 1 to 4 for recasting issues. No provision is cited. However, in view of prayer and tenor of application, present application is being disposed off as per Order 14, Rule 5 of Code of Civil Procedure.
2. Perused application and say of plaintiff. Perused pleadings and issues framed below Exh. 40. Heard both parties.
3. It is contended by defendants that plaintiff has filed present suit for partition, separate possession and injunction. Deceased Narayan, the ancestor of plaintiff and defendant nos. 1 to 4, had one more daughter by name Pravina Rameshkumar Sharma. She is not joined as party and the suit is bad for the same. Defendants have also pleaded about the same. Therefore, issue with respect to whether suit is bad for non-joinder of necessary party, is required to be framed. Said issue goes to the root of the matter. There is no delay in filing the application. The framing of issue will also enable parties to lead evidence on said issue. No prejudice would be caused to plaintiff, if application is allowed. Hence, the application.
4. Plaintiff objected the application by filing say overleaf. He submitted that application is not tenable and maintainable. He further submitted that if defendants have grievance about addition of party, then he may apply for such addition. Hence, application is liable to be rejected.

5. Present suit is for partition, separate possession and injunction. Plaintiff has not objected or stated that deceased Narayan was not having one daughter by name Pravina. The record shows that defendant nos. 1 to 4 have specifically pleaded about the daughter Pravina and also about that she is a necessary party. However, no such issue has been framed by my Ld. Predecessor. Considering the nature of suit, said Pravina is a necessary party, without whose presence present suit cannot be disposed off properly. In such circumstances, such issue is required to be framed in the interest of justice and as per Order 14 Rule 5 of Code of Civil Procedure. No prejudice would be caused to plaintiff as opportunity to lead additional evidence can be granted to both parties. Therefore, application deserves to be allowed. Hence, the order:

### **ORDER**

- 1) Application is allowed.
- 2) Following issue is framed as issue no. 7-A below Exh. 40  
“ 7-A. Whether the suit is bad for non-joinder of necessary party ? ”
- 3) Both parties to lead additional evidence, if any, on above issue.
- 4) Parties to note.
- 5) Costs on applicants.

Balapur  
Dated: 16/12/2020

(C. P Raghuvanshi)  
Civil Judge (J.D.), Balapur.

**CERTIFICATE**

I affirm that the contents of this P.D.F file are same word for word as per original order.

Name of Steno : Shaikh Rafique Shaikh  
Rasheed  
Court Name : C.J.J.D. & J.M.F.C., Balapur.  
Date : 16/12/2020.  
Signed by Presiding Officer on : 16/12/2020.  
Uploaded on : 16/12/2020.

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