

MHAU110003282007



ORDER BELOW EXH.94

Present suit is filed for removal of encroachment and recovery of possession. Present matter is remitted back for fresh consideration on the point of remeasurement of Gut no.103 and 104 so as to determine alleged encroachment if any, into their land situated in Gut no.104. Present application is filed by applicants to add them as proposed plaintiffs in this suit.

Contentions of applicants:

2. These applicants stated that they were not having knowledge about present suit. As they are holding some part of the suit property alongwith plaintiffs therefore, necessary to be added as plaintiff no.3 and 4 in present suit. After got knowledge about present suit, applicants filed this application to add them as party plaintiff no.3 and 4 in this suit.

Contentions of defendants:

3. Defendants filed their say and strongly objected present application stating that original suit is of 2008 which is decided earlier and on the point of remeasurement, it has remanded back therefore, other new grounds and facts and information cannot be considered. Only technical grounds to be accepted. Plaintiff not to be allowed to fill up the lacuna. Adv. for defendants prayed to reject said application.

4. After going through application and say filed. Heard advocate of plaintiffs and defendants. After going through contentions of parties, following point came to my mind for which I have given my finding alongwith reason thereupon.

Sr.No.	Points	Findings
1.	Whether it is necessary to add applicants as party to the suit, in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit?	Negative.
2.	Whether the applicant is entitled to add as party plaintiff no.3 & 4?	Negative

3.	What order?	Application is rejected.
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REASONS

5. After going through applicant and say filed herein, it seems that present applicants filed application to add them as party plaintiff no.3 and 4. They stated that they also jointly hold suit property up to 2H in the suit property. Furthermore, in present suit, measurement has taken place by order of the Court. As property in 7/12 extract though shown in the name of plaintiffs, they hold jointly with plaintiffs and claiming that they are also related with suit property hence prayed to add as a party to suit.

6. Against this, plaintiffs prayed to allow the application while, defendants strongly objected adding applicants as party to the suit on the ground that present suit filed by plaintiffs against defendants is mainly for possession and suit is filed in 2008, till date applicants not filed any such application and now when matter is already decided and during the appeal, matter is remanded on the point of remeasurement through TILR, at this stage, such applications cannot be entertained. He further argued that no need to add these applicants as a party to suit. This application being misconceived and plaintiffs is trying to fill up lacuna hence, no new facts can be introduced at this stage and it deserves to be rejected.

7. Coming to present suit, filed by plaintiffs for possession of 17R suit land from defendants. Firstly, matter is much old as filed in 2008. There is no proper and satisfactory reason put forth by present applicants for causing such enormous delay. Only not having knowledge till date and suddenly acquired knowledge from some relatives, such vague reason cannot take place of solid and cogent reason to explain delay. Moreover, this matter is already been decided earlier, remanded back on the point of remeasurement. Therefore, parties not have liberty to introduce new facts at this stage.

8. Most importantly, considering nature of suit, between plaintiffs and defendants it seems that present plaintiffs will have filed suit for recovery of encroached portion of 17R land from defendants. While, applicants contending they jointly hold land with plaintiffs but no document in their support has been filed on record. Therefore, in the absence of proper and satisfactory explanation, doubt is created that plaintiffs trying to introduced new facts at the very end of proceeding. However, present

suit is filed for different purpose altogether as well as main issue involved herein is about ownership of plaintiffs over 17R land between plaintiffs and defendants. Therefore, decree will be binding upon party to suit.

9. While, these applicants are not seems necessary parties considering issue involved herein. Most importantly, to see whether the applicant is necessary to effectually and completely to adjudicate upon and settle all the questions involved in the suit. For that purpose, going through application, I do not find it necessary to add these applicants as party plaintiffs to present suit as their right over suit property is not issue involved in this suit. Moreover, considering subject matter of present suit and nature of present suit I do not think these applicants are necessary party to the present suit. Hence, I answer point no.1 and 2 in negative and in answer of point no.3 passing following order.

ORDER

- i. This application is rejected.



(V. V. Raojadeja)
Civil Judge Junior Division
Phulambri.

Date:11/01/2024