

Order below Exh. 31

1] This is an application by third party Sushilabai Bhagwan Gosai under Order I, Rule 10(2) of the Code of Civil Procedure to implead her as defendant in the suit.

2] Read the application, say filed by the plaintiff and defendant at Exh. 33 and 35. Heard both the sides.

3] Upon such hearing and perusal of record, it reveals that the plaintiff has instituted the present suit for specific performance of contract and perpetual injunction. According to the applicant, defendant No. 1 & 2 are her father and mother and defendant No. 3 is her brother. The suit property is joint family property. Therefore, she alongwith her two sisters have 1/5th undivided share into the suit property. Suit property is yet not partitioned between defendant No.1 to 3. She has instituted R.C.S No. 34/2014 for partition, possession and perpetual injunction which is pending in the Court. Therefore, if she alongwith her sisters are not implead in the suit it will cause irreparable loss to them. Therefore, she requested to implead her as well as her sisters in the suit as defendant.

4] Defendant No. 1 to 3 opposed the application and contended that during the lifetime of defendant No. 1 she has no right to claim partition in the suit property. Since there is no cause of action for filing the present application. The application is not tenable and therefore, liable to be rejected. The plaintiff contended that the third party applicant has no concern with the suit property. During the lifetime of defendant No. 1 she has no right to claim partition into the suit property, and therefore prayed for rejection.

5] As per Order 1 Rule 10 (2) of the Code of Civil Procedure the Court is empowered to add any person as a party to the suit when such person ought to have been joined as a plaintiff or defendant, and is not so joined, or without his presence the question involved in the suit can not be completely decided. The present suit is for specific performance of contract on the basis of agreement to sale executed by the defendant no. 1. Whether defendant no. 1 has executed the agreement to sale in favour of the plaintiff is the fact in issue in the present suit. To decide the said fact in issue the present applicant is not necessary party. Therefore, considering the facts and circumstances of the present suit, the applicant is not necessary party to adjudicate the present suit. The suit can be effectively and completely adjudicate upon and settle the question involved in the suit without impleadment of the present applicant. On the other hand, the applicant herself submitted that she has instituted R.C.S. No. 34/2014 for partition possession and perpetual injunction against defendants. She has already instituted the suit for partition. Therefore, she cannot claim partition in the present suit. In the circumstances, the suit can be adjudicated upon without the applicant. Considering the aforesaid discussion, there is no substance in the application. Hence, the application is liable to be rejected. Resultantly, I pass the following order.

ORDER

The application is rejected.

Dondaicha.
Date :- 23/11/2017.

Sd/-
(A. J. Girhe)
Jt. C.J.J.D. (Court No.2),
Dondaicha.

- Certificate -

I certify that the contents of this PDF File are word to word as per Original Judgment / Order.

Name of the Steno : M. M. More
Name of the Court : Jt. Civil Judge, J.D.,Dondaicha.
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Sd/-xxx
Stenographer