

R.C.S. No. 14/2019
Rita & Ors .Vs. Khilendra & Ors

ORDER BELOW EXH. 38

1. This is an application filed vide Order I Rule 10 of CPC for adding of parties in the plaint. It is contended in the application that defendant No. 5 died prior to 10 years. He is having legal heirs therefore they needs to be brought on record. Defendants filed say and resisted the application by reasons that instead of bringing LR's of defendant No. 5 on record this application is filed vide Order I Rule 10 of CPC. It is not maintainable hence prayed for rejection.

2. Heard Ld. Advocate Shri. D.M. Kosarkar for plaintiffs and Adv. Shri. Malewar for defendants. I have gone through record and proceeding. It appears that present suit is filed for partition, separate possession and injunction. Defendant No. 5 is reported as dead. Much time after his death is over. Considering the nature of suit as of partition and possession, it can not be completely disposed of unless all stake holders are made party in the suit. Legal heirs of defendant No. 5 are necessary party in the suit therefore they should be brought on record. There are judgments of Hon'ble High Court that an application filed for addition of parties should be treated as filed under Order XXII of CPC. As such I find the application as maintainable. Moreover considering the nature of suit in order to decide rights of

parties completely, proposed persons should be brought on record. However persons by name Ganesh Kulpat Bhagat, Giranbai Tukaram Bhagat and Harkabai Kulpat Bhagat are already on record as defendant No. 6 to 8 therefore they can not be added as parties to the suit. Except them person by name Sukhdev Gosai Bhagat is died on 16.10.2019 having his legal heirs therefore they should be brought on record in the shoe of Sukhdev Bhagat. Accordingly the application deserves to be partly allowed. In the result I pass following order.

ORDER

1. Application (Exh. 38) is partly allowed.
2. Plaintiffs are permitted to add persons described as (a), (c) to (e) and (i) to (k) as defendants in the suit.
3. Accordingly necessary amendment in plaint be made within 14 days from the date of order and plaintiffs shall supply copy of amended plaint thereafter immediately.

Place : Tirora
Date : 24.08.2022

(D. S. Wamane)
Civil Judge (Jr. Dn.), Tirora.