

Order below Exh. 23

(Dt. 09/07/2018)

1] This application is filed under Order I Rule 10 of Civil Procedure Code. As per the contention of plaintiffs they have filed suit for partition and separate possession. Defendant No. 1 sold suit property to defendant No. 3, thereafter defendant No. 3 also sold suit property to Bhimrao Kanhu Rathod and executed sale-deed in his favour on 12/06/1999. Therefore Bhimrao Kanhu Rathod is necessary party to present suit. But due to oversight he is not made a party. Hence this application is filed and requested to add him as a defendant.

2] Proposed defendant appeared and filed his say at Exh. 32. He has strongly opposed this application. As per his contention necessary document not provided to him by the plaintiffs. If the application allowed nature of the suit will be changed. He has also contended that sale-deed No. 2118/99 executed in his favour in the year 1999, but this application is filed on 01/04/2017 which is not within limitation. Hence he has requested to reject this application.

3] Heard counsel for both side. Perused record and proceeding. Present suit is filed for partition and separate possession. Defendants appeared, they have filed written statement at Exh. 12. Defendants have raised objection in their written statement that, Bhimrao Kahnu Rathod is the necessary party to the present suit, but he is not made a party. Hence the suit is barred by non-joinder of necessary party.

4] As this application filed under Order I Rule 10 of Civil Procedure Code, which reads as under :-

Order I Rule 10 (2) :- Court may strike out or add parties —

The Court may at any stage of the proceedings, either upon or without the application of either party and on such terms as may appear to the Court to be just order that the name of any party improperly joined, whether as plaintiff or defendant be struck out and that the name of any person who ought to have been joined whether as plaintiff or defendant or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

5] Under this Rule person may be added as a party to the suit :- i) When he ought to have been joined as a plaintiff or defendant and is not so joined. ii) When without his presence the question in the suit cannot completely decided. As per settled principal of law if any such person is a necessary party in the suit is required to be add to enable the Court to effectually adjudicate all the question involved in the suit.

6] Present suit is filed for partition and separate possession. Proposed defendant is the purchaser of the suit property. Hence he is necessary party to the suit. To complete and final adjudication of all the issues between the parties proposed defendant is required to be made as a party to this suit. Hence I proceed to pass following order.

ORDER

- (i) Application is allowed.
- (ii) Plaintiffs are allowed to add Bhimrao Kahnu Rathod as a defendant No. 4 in the present suit.

- (iii) Plaintiffs are directed to carry out necessary amendment in the plaint within 14 days from the date of this order and shall file necessary copies of amended plaint.

Date: 09-07-2018

Sd/-
[S.S. Ingle]
Civil Judge, J.D.Mantha