

MHKO100000752023

REGULAR CIVIL SUIT NO. 27/2023

Suman Phadake.

//Vs//

Prakash Shelar & Ors.

ORDER ON EXHIBIT NO. 42

This is an application filed by third persons under Order 1, Rule 10 of the Code of Civil Procedure for adding them as parties to the suit. Plaintiff filed say overleaf. Perused application and say. Heard both side.

02. Applicants contended that, the present suit is filed for partition. Applicant no.1 is wife of defendant no.3 and applicant nos. 3 to 4 are children of defendant no.3. All suit properties are ancestral properties of applicants. Defendant no.3 in lifetime of applicant no.1 remarried and living with his second wife. Defendant no.3 is addicted person and he is trying to sell his share in the suit properties. Since, applicants are having their share in suit properties and defendant no.3 is trying to deprive applicants from their share. Thus, as applicants are having interest in the suit properties, they are necessary party in the suit and without their presence suit cannot be decide on merit. Further, if applicants are not added in the suit, they will suffer irreparable loss. Therefore, they prayed for adding them as a parties to present suit.

03. Plaintiff submitted that, contentions of the application are false and in a suit for partition present applicants are not necessary parties. Therefore, prayed to reject the application.

04. It is settled principle of law that, it is always open for the Court to add any such person as a necessary party in the suit to enable

the Court to effectively adjudicate upon the question involved in the suit. However, for exercise of the powers under Order 1, Rule 10 (2) of the Code of Civil Procedure, it has to be seen as to whether the party is necessary party or proper party. A necessary party is one without whom no order can be made effectively and proper party is one, in whose absence an effective order can be made, but whose presence is necessary for complete and final decision of the question involved in the suit.

05. On the aforesaid background, if the instant application is considered, it is seen that, present suit is filed for partition and relationship between applicants and defendant no.3 is not specifically denied. As per contentions in plaint suit properties are ancestral and joint family properties of plaintiff and defendants. Since, applicant nos. 2 to 4 are children of defendant no.3 they are coparcener. Thus, every coparcener is having right in ancestral properties. However, applicant no.1 is wife of defendant no.3 and she is not coparcener. Therefore, every coparcener can claim partition and thus, applicant nos. 2 to 4 being coparcener are necessary parties in the suit. Thus, present applicants being necessary parties requires to be added as defendants in the suit.

06. In view of aforesaid discussion, when plaintiff is seeking partition in respect of ancestral and joint family properties of which present applicants are coparcener, their presence is necessary in the suit. If, third parties are added as a party to the suit, no prejudice will cause to plaintiff. On the contrary, if suit is finally heard and decided without hearing third party applicants, who claims interest in the suit properties, it will definitely cause irreparable loss to them. Therefore,

third party applicants are necessary party to the suit and their presence is necessary for effective adjudication of the dispute involved in the present suit. In this view of matter the instant application is deserved to be allowed. Hence, I proceed to pass following order.

ORDER

01. Application is partly allowed.
02. Plaintiff is directed to implead third party applicant nos.2 to 4 as defendants and carry out the necessary amendment in suit within 14 days from the date of this order.
03. Plaintiff shall also furnish necessary copies of amended plaint in suit.

(Dictated and pronounced in open Court)

Gadhinglaj.
Date: 15/10/2024.

(Sujit A. Rathod)
Jt. Civil Judge Junior Division,
Gadhinglaj.

I affirm that the contents of this P.D.F. file Judgment/Order are same, word to word, as per the original Judgment/Order.

Name of stenographer	R. D. Patil.
Name of Court	S. A. Rathod, Jt. CJJD & JMFC, Gadhinglaj.
Date of Dictation	15/10/2024
Order signed by P.O. on	15/10/2024
Order uploaded on	15/10/2024