

:: ORDER BELOW EXH.63 ::

This is an application filed under Order I, Rule 10 of the C.P.C. by the third party applicants, requesting them to implead in the present suit as defendants.

2) Through this application, applicant nos.1 to 7 submits that they are the sons and daughters of Narayan Shetty begotten from his first wife Laxmi. The suit property is the ancestral property. The plaintiff has filed present suit for the partition and separate possession. Thus, they are also having undivided share in it. Hence, their presence is necessary for the adjudication of the present suit. Therefore, they may be impleaded as defendants in the suit.

3) The plaintiff raised strong objection for granting the application by filing his say at Exh.66 and submits that the application is false and mis-leading. The third party applicants have filed present application only to create hurdle in the proceedings of the present suit. The pedigree of the family given in the application is also false. The suit property was the self-acquired property of Shankar Bala Shetty. He bequeathed the same in his favour and in favour of defendant nos.1 to 5 by way of Will deed dated 10/03/1987. Hence, the

third party applicants are not having any concern with the suit property. Therefore, the application may be rejected.

4) Defendant nos.1 to 5 also contested the application and requested for the rejection of the application.

5) Heard both sides. Perused the written notes of argument (Exh.68) filed by the plaintiff.

6) Herein, the conjoint reading of contentions made in the plaint, written statement (Exh.30) filed by defendant nos.1 to 5, written statement (Exh.33) filed by defendant no.6 and the contentions in the present application, shows that the parties are not disputing about the fact that Shankar Bala Shetty was having two other brothers namely Narayan & Laxman. Shankar Bala Shetty died un-married. Plaintiff and defendant nos.1 to 5 are the legal heirs of Narayan Shetty. Defendant no.6 is the grand-daughter of Laxman Shetty.

7) According to the applicants, Narayan Shetty was having two wives. The name of his first wife was Laxmi. They are the sons and daughters of Narayan Shetty and his wife Laxmi Shetty. Plaintiff and defendant nos.1 to 5, in their say (Exh.66 & 65 respectively) nowhere specifically challenged

the said fact. They have made vague contentions that the pedigree given in the application is false and bogus. They have also not made clear what is the exact relation of third party applicants with Narayan Shetty. In such circumstances, the claim of the third party applicants that they are the legal heirs of Narayan Shetty begotten from his first wife Laxmi, cannot be rejected straight way at this stage. Moreover, the relation of third party applicants with Narayan Shetty is also explained by defendant no.6 in her written statement (Exh.33). According to defendant no.6, the suit is bad for non-joinder of necessary parties for the want of impleading the present applicants in the suit.

8) Herein, the plaintiff has filed present suit for the relief of partition and separate possession of the suit properties. According to the plaintiff, the suit property is the self-acquired property of his uncle Shankar Bala Shetty. Shankar Bala Shetty died un-married. Laxman Shetty and Narayan Shetty are also no more. Hence, he himself and the defendant nos.1 to 5 are the only legal heirs entitled to inherit the suit properties. Defendant no.6, who is the grand-daughter of Laxman Shetty cannot take anything out of the suit property before them. Hence, she is not having any concern with the suit property. The plaintiff lastly requested for the

partition and separate possession of the suit property and for the declaration that defendant no.6 is not having any concern with the suit property.

9) Defendant nos.1 to 5 admitted the contentions made in the plaint by filing their written statement at Exh.30. However, in order to substantiate their claim over the suit property, they came with altogether different theory. According to them Shankar Shetty bequeathed the suit properties in their favour and in favour of the plaintiff, by way of Will deed dated 10/03/1987.

10) Defendant no.6 contested the suit by filing written statement at Exh.33 and denied the contentions of the plaintiff that she is not having any concern with the suit property and she is not entitled to inherit the same. She has also challenged the suit inter-alia contending that the present third party applicants are the legal heirs of Narayan Shetty and without their presence, the suit is not maintainable.

11) As above discussed, the plaintiff is claiming his interest over the suit property inter-alia contending that they are entitled to inherit the suit property vide section 8 of the Hindu Succession Act. That it means, being the Class-II heirs

of Shankar Shetty, they have inherited the suit property. Thus, they are also entitled for its partition. As above discussed, the contentions of the third party applicants that they are also the legal heirs of Narayan Shetty, cannot be rejected at this stage. Hence, if at all the plaintiffs are entitled to inherit the suit property then the other legal heirs of Narayan Shetty are also entitled to inherit the suit property. In this way presence of third party applicant is necessary in the suit.

12) Learned advocate of the plaintiff in their written notes of argument referred the Will dated 10/03/1987 and thereby submits that the suit property is bequeathed to the plaintiff and defendant nos.1 to 5 only. However, the said contentions of the plaintiff cannot be accepted at all because on perusal of recitals of the will, it becomes clear that the plaintiff is not claiming his interest in the suit property by virtue of Will dated 10/03/1987 but he is claiming right under inheritance vide section 8 of the Hindu Succession Act. Therefore, the contentions of the plaintiff regarding the genuineness of Will, the recitals of the Will and the various case-laws placed on record, showing the position of law as regards the dispute about Will are not at all helpful to the plaintiff. In all these circumstances, in my view, the

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application will have to be allowed and permission will have to be granted to the third party applicants to implead themselves in the suit as defendants. Hence, I pass following order,

ORDER

- 1] The application is allowed.
- 2] Permission granted to the third party applicants to implead themselves in the suit as defendants.

Sd/-

(S. S. Parave)

Civil Judge Junior Division,
Gargoti.

Place : Gargoti.

Date : 23/01/2018.

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

Name of the Stenographer	:	Mr. S. D. Sarang
Name of Court	:	Court of Civil Judge Junior Division, Gargoti, Tah. - Bhudargad, District - Kolhapur
Date of Dictation	:	23/01/2018
Order signed by the P.O. on	:	23/01/2018
Order uploaded on	:	23/01/2018