



Before the Court of Jt.Civil Judge Junior Division, Panhala.

Presided over by

(Prerana R.Nikam)

Regular Civil Suit No.156 of 2015.

Namdev Kisan Patil

V/s.

Sakharam Tukaram Bange

Order Below Exh. No.29.

(Passed On 10th day of February, 2020)

Nature of the application-

1] The present application is filed by the plaintiff under order 1 rule 10(2) of the Code of Civil Procedure, 1908 for adding Mayur Mahaveer Kapase as defendant no.3, in the present suit.

Grounds of the application-

2] By this application, plaintiff contended that, at the time of filing the suit the 7/12 extract of the suit property consists only the name of defendant no.2 but now it appears that, defendant no.2 sold some portion of the suit property to the person namely Mayur Mahaveer Kapase. Therefore, to decide the matter on merits it is necessary to add the person as defendant. Hence, prayed to add Shri Mayur Mahaveer Kapase as defendant no.3, in the present suit.

Say of the defendants-

3] The defendants opposed to the present application by filing their say vide Exh.32, mainly on the ground that the contents of the present application are false. The plaintiff is deliberately prolonging the matter. If the application is allowed then it will cause serious prejudice to the

defendants than the plaintiff. Hence, prayed to reject the application with heavy cost.

4] I have heard the learned advocates for the respective parties at length.

5] It is settled law that, it is open for the court to add any such person as a necessary party in the suit to enable to the court to effectively adjudicate the question involved in the suit. However, for exercise of power 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 part is one in whose absence an effective order can be made but whose presence is necessary for complete and final decision on the question involved in the suit.

6] The present suit is instituted for partition. It is settled principle of law that the suit for partition cannot be maintained unless all the co-sharers are joined as parties in the suit. If one of the co-sharer admitted that the portion of the suit property is transferred to another person then that person automatically become co-sharer by virtue of transfer. Therefore, the presence of Shri Mayur Mahaveer Kapase, is necessary for effective adjudication of the matter and for maintainability of the suit. considering all these facts and circumstances of the case this court is of the opinion that, Shri Mayur Mahaveer Kapase is necessary party to the present suit. In this view of the matter, the present application is deserves to be allowed. Hence, I proceed to pass following order,

ORDER

1] Application is allowed.

2] The plaintiff is directed to made party to Shri Mayur Mahaveer Kapase as defendant no.3 in the suit.

3] The plaintiff to that effect shall amend the plaint and file the amended copy of the plaint within period of seven days from today.

Panhala

Date 10.02.2020

(Prerana R.Nikam)

Jt. Civil Judge Junior Division,
Panhala, District Kolhapur.

