

Reg. Civil Suit No. 110 /2012

ORDER BELOW EXH. 21

This is an application by defendant under Order 14 Rule 5 for framing additional issue.

2. Defendant avers that vide written statement at Exh. 15 he has answered the plaintiff's claim. Vide his written statement defendant has contended that Anandi Baburao Khot and Anandi Raghunath Sathe are real sisters of plaintiff and defendant. The suit is filed for partition and separate possession. Thus, aforementioned sisters constitute necessary parties to the suit. However, as the sisters are not made party, the suit is bad for non joinder of necessary parties. This court has framed issues. However, the issue pertaining to non joinder of necessary parties is not framed. Hence, this application.

3. Plaintiff combated the application. He contends that the joint family properties except the suit properties have been partitioned among plaintiff and defendant prior to year 2005. In order to provide maintenance for their father Late Mr. Kundalik Farakate, the suit properties were excluded from the said partition. As the partition has taken place before year 2005 the sisters are not entitled for the suit properties. Thus, they do not constitute necessary parties. Consequently, it is not necessary to frame additional issue as prayed. Ultimately, he prayed for rejection of the application.

4. Heard both sides. Perused record. The following point arise for determination and this court records reasoned findings thereon as under :-

Sr.No	Point for determination	Findings
1	Whether, framing of additional issue as prayed is necessary for determining the matters in controversy between the parties ?	Yes.
2	What order ?	As per Final Order

REASONS

As to Point No. 1

5. The then presiding officer has framed issues at Exh. 16. The defendant has answered plaintiff's claim vide written statement at Exh. 15. Needless to mention that issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

6. The suit is for partition. Admittedly, plaintiff has not made sisters as parties to the suit. On perusal of written statement at Exh. 15, it transpires that in paragraph No. 8 of the written statement defendant has admitted his relation with plaintiff and also contended that plaintiff and defendant are not the only heirs to Late Mr. Kudalik Farakate. He further contends that Anandi Baburao Khot and Anandi Raghunath Sathe are real sisters of plaintiff and defendant and daughters of Late Mr. Kundalik Farakate. Thus, the sisters also constitute heirs to Late Mr. Kundalik Farakate. Consequently, they have share in the suit properties. In this background in absence of the sisters the matters in contravarcy between the parties can not be decided. Thus, suit is bad for non joinder of necessary parties.

7. Plaintiff has admitted that Anandi Khot and Anandi Sathe are daughters of Late Mr. Kundalik Farakate. However, he denies that the sisters constitute necessary parties to the suit. As discussed herein

above issues arises when a material proposition of fact or law is affirmed by the one party and denied by the other. In view of aforementioned discussion it is ample clear that defendant has specifically affirmed that the suit is bad for non joinder of necessary parties and plaintiff has denied the same.

8. Thus, considering nature of suit, facts and circumstances of the case and in view of aforesaid discussion this court is of view that issue pertaining to non joinder of necessary parties arises in instant case. Consequently, framing of additional issue as prayed is necessary for determining the matters in controversy between the parties. No harm or prejudice would cause to either party if issue as prayed is framed. Hence, point No. 1 is answered in affirmative and in answer to point No. 2, following order is passed :-

Order

1. Application is allowed .
2. The following issue is framed as issue No. 6-A,
“ Whether the suit is bad for non joinder of necessary parties ?”

Radhanagari.

Date : 04-11-2017.

(M. H. Shitole)
Civil Judge, Jr.Dn., Radhanagari.

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	U.S.Telang
Name of Court	Civil Judge, Junior Division & Judicial Magistrate, First Class, Radhanagari.
Date of Dictation	04/11/2017
Order signed by the P.O. On	04/11/2017
Order uploaded on	06/11/2017

Vide this application plaintiff has prayed for inserting the names of proposed defendants in suit as defendants No. 4,5 and 6.

2. Plaintiff avers that subsequent to the amendment in written statement of defendants 2 and 3, plaintiff came to know that Dhondubai Thaku Bajari, Kondubai Sakharam Bodake and Sakhubai Kanu Bodake are also the legal heirs of Late Mr. Thaku Tagu Bajari. As the suit is filed for partition and separate possession, the persons named herein above constitute necessary parties to the suit. Hence, this application.

3. Vide say at Exh. 60, defendants 2 and 3 combated the application contending that the proposed defendants have released their rights and interests in favour of defendants 2 and 3. Thus, it is not necessary to make them party defendant to the instant suit. Ultimately, they prayed for rejection of this application.

4. Heard both sides. Perused record. Admittedly, the suit is filed for partition of the suit properties. Vide written statement at Exh. 21, defendants 2 and 3 have contented that the pedigree described in plaint is not true and correct. In paragraph No. 10 (a) of their written statement the defendants further contend that the proposed defendants are legal heirs of Late Mr. Thaku Tagu Bajari. Thus, it is clear that the proposed defendant are legal heirs of Late Mr. Thaku Tagu Bajari.

5. The main objection raised by defendants to the instant application is pertaining to the merits of the proposed amendment. It is settled position of law that the merits of the amendment is to be decided at the final hearing and it can not be considered at this stage. The defendants will have an opportunity to answer the proposed amendment. Thus, no harm or prejudice will cause to the defendants if instant application is allowed. Per contra considering nature of the

suit it seems justifiable to bring all the legal heirs of deceased defendant on record in order to decide the dispute between parties on merits. Thus, instant application deserves to be allowed. Hence, following order :-

Order

1. Application is allowed.
2. plaintiff is directed to carry out necessary amendment within the period of 14 days from this order or on or before next date which ever is earlier.

Radhanagari.

Date : 03-11-2017.

(M. H. Shitole)
Civil Judge, Jr.Dn., Radhanagari.

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	U.S.Telang
Name of Court	Civil Judge, Junior Division & Judicial Magistrate, First Class, Radhanagari.
Date of Dictation	01/09/2017
Order signed by the P.O. On	01/09/2017
Order uploaded on	04/09/2017