

**Order below Exh.41 In R.C.S. No.592 of 2021**

(Passed on this 13<sup>th</sup> day of August, 2024)

**Priti Vrs. Hariram + 1**

**CNR NO.MHLA060025402021**

1. This is an application file by the third persons to implead them in the suit as per order 1 Rule 10 of the Code of Civil Procedure (C.P.C.).

2. Perused the application say of the plaintiffs filed overleaf. Perused the plaint and written statement of defendants No.1 at Exh.24.

3. The third persons averred in the application that, the suit is for partition and separate possession in respect of land Gat No.333 Adm. 3 H 21 are situated at village Takalgaon. As per the plaintiff it is the joint family property of plaintiffs and defendant No.1. The plaintiffs have claimed 2/3rd share in the suit property. Defendant No.1 has be gotten two daughters and a son who are applicants No.1 to 3 of the present application from second wife of defendant No.1 namely Shobhabai. Therefore, the applicants have share and interest in the joint family property of defendant No.1. However, the plaintiffs have not made the applicants party to the suit with malafied intention to deprive them from their right in the suit property. Therefore, the applicants are the necessary parties to the present suit. In absence of the applicants on record, the present suit cannot be effectually and finally decided. As per section 16(3) of the Hindu Marriage Amended Act, the illegitimate sons out of second marriage are treated as legitimate and they are having share in the property of their parent and as such they are entitled to the share in the

partition. Hence, requested to allowed the application and to include them as defendant No.3 to 5 in the title clause of the plaint.

4. The plaintiff contended that, the mother of the applicants is the second wife of defendant No.1. Defendant No.1 has performed second marriage in existence of first marriage. This facts are admitted to defendant No.1. The applicants are bond out of the void marriage. Therefore, the applicants are not coparcener of the joint family of the plaintiffs and defendant no.1. Applicants are not necessary parties to the present suit as per section 16(3) of Hindu marriage act 1955. Hon'ble Supreme Court Of India has also observed the child born out of void marriage are not coparcener of their father even they cannot claim partition during lifetime of their parents and they have share in the property of their parent only. The plaintiffs have claim separation of their shares from the share of defendant No.1 in the suit property. Defendants No.1 is alive hence the share of the applicants cannot be decided in the instant case. Thus, the applicants are not necessary parties to decide the present suit. Defendant No.1 playing delay tactics to prolong the matter. The application is illegal and it is filed with malafied intention to prolong the suit. Hence, requested to reject the application with heavy cost.

5. Ld Advocate for the third person argued that, the application at Exh.05 is allowed in which unnecessary observation about impleading the present applicants. In the suit is discussed. That point was not fact in issue in that application. Therefore, it is not a finding. Section 6 of the Hindu succession act does not make distinction in legitimate and illegitimate daughters. As per the said section all daughters

whether legitimate or illegitimate are the coparceners. All coparceners have every right to contest partition suit. Hence, the applicants are the necessary party to the suit.

**6.** Ld Advocate for plaintiffs argued that, relationship and nature of the property as ancestral property is admitted to both the parties. There is no partition took place among the plaintiffs and the defendant is also admitted. Coparceners can claim share at any time. The plaintiffs have preexisting share since it is the ancestral property of defendant No.1. The applicants are illegitimate children of defendant No.1. Therefore, they are not coparcener. Therefore, they have not right to seek partition. Illegitimate children have right in the parents property. They have no right in the other property. Since the illegitimate children are not coparcener they are not necessary parties to the suit. The point of arraying the applicants in the suit is discussed at length in order below Exh.05. Hence, the same point did not discuss again.

**7.** Following facts are admitted to the both parties which is clear from the plaint and the written statement;

That, plaintiff No.2 is the first wife of defendant No.1 and Shobha is the second wife of defendant No.1 and defendant No.1 performed marriage with Shobha in the lifetime of plaintiff No.2. Plaintiff No.1 is born out of wedlock of plaintiff No.2 and defendant No.1. The applicants are the children of second wife Shobha. That, the suit property is the ancestral property of defendant No.1 and the partition among defendant No.1 and the plaintiffs has not been taken place.

**8.** In view of the above admitted facts it is clear that the marriage of defendant No.1 with Shobha was void and

applicants being the children of Shobha are the illegitimate children defendant No.1 as per the settled position of law and as per section 63 of the Hindu Succession act illegitimate children have right in the parents property. The property of parent may be self acquired or ancestral property which is separated after partition. The illegitimate children are not the coparceners of the joint family of their father or mother. Therefore, in the present case the applicants are not the coparceners of the joint family of the plaintiffs and defendant No.1. Being the illegitimate children they have right in the share of defendant No.1. The present suit is for adjudication of the right between plaintiff and defendant No.1 interse. Therefore, even if the applicants are not made party to the suit, no prejudice would cause for adjudication of the present suit. Necessary parties are the parties without whom no suit can be decided. However, as discussed about suit can be decided without causing prejudice to the applicants. Hence, the applicants are not necessary parties. The point of arraying the applicants as party to the suit is discussed at length while deciding application at Exh.05. Hence it is not necessary to discuss this point again. Thus, the application is devoid of merits. Hence liable to be rejected. Hence i pass the following order;

### **ORDER**

The application is rejected with cost

**Place:** Ahmedpur.  
**Date:-** 13.08.2024.

Sd/-  
(**Swanandi D. Wadgaonkar**)  
3<sup>rd</sup> Jt. Civil Judge, J.D.,  
Ahmedpur.