

ORDER BELOW EXH.23 IN RCS NO.148/2020

(Sundarbai & Ors. V/s. Vishal & Ors.)

This is an application filed by applicant Maroti Gangaram Choudhari for adding himself as defendant in the present suit. He has contended that, suit land bearing Survey No.238 adm. about 12 H. 65 R. and Survey No.244 adm. about 10 H. 97 R. situated at Udgir are originally *Mahar Hadola* lands which are allotted to these persons who were working as Sweeper.

2. It is contended that, persons namely Satwa s/o. Maroti, Hashya S/o. Jairamya, Tukya S/o. Satu and Iriya S/o. Barku were cultivating the suit properties and maintaining their family and their names accordingly mutated in the 7/12 extracts on 05.12.2013 by the order of Tahasildar, Udgir. It is further contended that, after the death of Hashya name of present applicant was mutated vide mutation entry No.1370 dated 23.01.2004 in the revenue records. As per the contentions of the applicant, plaintiffs and defendants have no concern in the suit land nor they are legal heirs of four persons above mentioned. Hence, prayed to allow the application and add himself as defendant to answer and defend the suit of plaintiff.

3. Present application is objected by the plaintiffs and defendants. However, they have not specifically contended anything against the present applicant. Applicant has relied upon the Judgment of Hon'ble Supreme Court in ***A.Anantha Reddy Vs. Ashu Kathuriya and Ors.: Civil Appeal No.10779 and 10780 of 2013***. I have respectfully gone through the above citation in which

Hon'ble Supreme Court has held that,

“Object of Order I Rule 10 (2) of C.P.C. to implead a third party to the suit is that the dispute in the suit would be resolved in the presence of all, in order to avoid multiplicity of proceedings.”

4. Applying the said law in the present case, there is no impediment to the plaintiffs and defendants if the applicant is added as party to the suit. Order I Rule 10 (2) of C.P.C. empowers the Court to strike out or add any party at any stage of the proceedings provided that, the presence of such party must be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit.

5. It is also true that, while adding the new party in the suit, only question is to see whether that party is a necessary party to the suit or not. A necessary party is a person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by Court. In the present case, the applicant is contending that, he is the legal heir of one of the original owner of the suit property i.e. Hashya S/o. Jairamya. He is also contending that, the suit properties are mutated in his name after the death of said Hashya. This is suit for partition. Apparently, plaintiff and defendants have not specifically denied the above mentioned position of the applicant. Therefore, I hold that, it would be necessary to add applicant as defendant and to give him proper opportunity to oppose the claim of plaintiff.

6. As per Order I Rule 10 (4) of C.P.C., where a

defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the plaint shall be served on new defendant and also to the original defendants. Therefore, in the present case it would be proper to add applicant namely Maroti Gangaram Choudhari as defendant No.9 in the present suit. After adding him, plaintiffs to carry out the proposed amendment in view of Order I Rule 10 (4) of Code of Civil Procedure. Hence, in view of the above reasons, I pass following order-

ORDER

1. Application is allowed.
2. Applicant Maroti Gangaram Choudhari is added as defendant No.9 in the present suit.
3. Plaintiffs to carry out the amendment in Exh.1 within 14 days and supply the amended copies of plaint to all the defendants including the applicant.

Udgir.
Date:- 24/03/2023

(N.J.Chavan)
3rd Jt. Civil Judge J.D.,
Udgir