

MHLA110000972015



Order below Exh.377 in RCS No.100/2010

Suryakant Vs. Ram

By this application defendants have requested for framing additional issue in respect of existence of relationship between deceased Suryakant and defendant Nos.6 to 10, on the grounds mentioned in the application. The contents of application in short are:- that the plaintiffs have filed this suit for partition and separate possession in respect of properties mentioned in the plaint. Defendants have filed their WS at **Exh.32** and denied the averments made by plaintiffs. Recently, the application moved by plaintiffs at **Exh.373** came to be allowed by this Court. That while filing the suit the plaintiffs have not made defendant Nos.6 to 10 as parties to the suit and they were added as party to the suit by way of amendment. That defendant No.6 is shown as wife of deceased Suryakant and defendant Nos.7 to 10 as their heirs. However, no facts are pleaded on this aspect. Hence, the application for framing additional issue regarding the existence of relationship between deceased Suryakant and defendant Nos.6 to 10.

2. Plaintiffs have filed their say at **Exh.378** and raised strong objections on several grounds. Perused application and say. Heard learned advocate Shri S.A.Sabnis for defendant and learned advocate Shri H.V.Gaikwad for plaintiffs. Learned advocate Shri Sabnis submitted that initially defendant Nos.6 to 10 were not parties to the suit. However, they are added as parties to the suit

later on. Defendant No.6 is shown as wife of deceased Suryakant and defendant Nos.7 to 10 as their legal heirs. Plaintiffs have failed to plead facts disclosing the relationship between deceased Suryakant and defendant Nos.6 to 10. He submitted that title clause of plaint is part of pleadings and therefore, suggested issue requires to be framed as additional issue at **Exh.101**. He requested to allow the application.

3. On the other hand, learned advocate Shri H.V.Gaikwad appearing for plaintiffs admitted that defendant Nos.6 to 10 were not parties to the suit initially but later on they are added as parties to the suit. He submitted that defendant Nos.1, 2 and 5 in their WS at **Exh.32** have specifically contended that one Naginbai was wife of deceased Suryakant and that's why these plaintiffs have added defendant Nos.6 to 10 as parties to the suit. He further submitted that issues are framed on the basis of facts pleaded by parties and plaintiffs have not pleaded any fact on the basis of which suggested issue can be framed as additional issue. He requested to reject the application.

4. I carefully considered rival submissions of both the learned counsels. Record shows that plaintiffs have filed this suit for partition and separate possession in respect of suit properties described in the plaint. Defendant Nos.1,2 and 5 have filed their WS at **Exh.32**. On several occasions amendment came to be carried out in the plaint and accordingly, amended WS filed by defendants. Defendant Nos.1,2 and 5 in para No.5 of their WS at Exh.32 have contended that deceased Suryakant had a wife namely Naginbai and her name is not reflected in pedigree drawn in the plaint. Thus, on the basis of these contentions defendant Nos.6 to 10 came

to be as parties to the suit. It is settled position of law that issues are framed on the basis of pleadings of the parties. In the instant suit, it is defendant Nos.1,2 and 5 who have disclosed that deceased Suryakant had wife namely Naginbai. Admittedly, plaintiffs have not made Naginbai and others as parties to the suit initially. This fact was brought to the knowledge of plaintiffs by defendant Nos.1,2 and 5 by making contentions to that effect in their WS. There are no pleadings to that effect and therefore, in the absence of any pleadings the question of framing an issue to that effect doesn't arise. Even otherwise, if these material facts regarding existence of relationship between deceased Suryakant and defendant Nos.6 to 10 is not pleaded by plaintiffs, then they will face the consequences. For the above reasons, I find no reason to frame an additional issue as suggested and pass following order:-

ORDER

1. Application is rejected.
2. No order as to costs.

Date : 29/07/2024

(Ashish B. Marlecha)
Civil Judge (Sr.Dn.),
Nilanga, Dist. Latur.