

ORDER BELOW EXH. 173 IN RCS No. 52/2009

This is an application filed by applicant under Order 1 Rule 10 of Civil Procedure Code, 1908.

02. It is averred in this application that she is legally wedded wife of Vithalrao Patil of Vannali, Tq. Degloor. She is eldest daughter of deceased Shyamrao Narayan Bhelonde resident of Takli Bk. Tq. Naigaon. It is submitted that she is real sister of defendants no.5 and 12. Deceased Shyamrao was having three daughters this applicants namely Gangabai and Sheshabai and Sumanbai and three sons namely Tukaram, Narsing and Jalba. All they are members of Hindu Joint Family. It is further pleaded that the suit properties bearing Gut no.163 and 74 and other joint ancestral family property have not been partitioned. The revenue record shows the name of applicant and her sister to the suit properties, so the applicant is necessary party to present suit. It is duty of plaintiffs to make party to the applicant at the time of filing of the suit but the plaintiff has malafidely avoided to make party to the present applicant. The name of applicant entered in other rights column of 7/12 extract but deliberately the plaintiff has not made party. The applicant and other two sisters have share in the suit property and in other property. No partition has been taken between them.

03. It is further contended that the brother of applicant used to offer sari and ornaments at the time of festival. On 15-1-2017 the applicant asked her share in yield in agricultural land, at that time her brother told about the suit and about heavy expenses for litigating the matter. Her brother denied to give her share. At that time the applicant came to know about the suit. The applicant submitted that she is necessary party for the suit. To avoid the multiplicity of the proceeding and complication. It is necessary to add her as a party in the present suit. No harm will be caused

if she is made party to the suit.

04. The plaintiff filed say at Exh.178 and contested this application strongly. It is contended that the application is not legally tenable or maintainable, the same is liable to be rejected.

It is contended that the suit property at clause-B and E of the plaint are not ancestral and undivided joint family property belongs to defendants no.5 and 12. The properties are exclusively owned and possessed by deceased Mahadu Devrao Bhelonde i.e. father of plaintiffs and the present applicant has no locus-standi to claim any share in the suit properties. It is contended that the cousin uncle of plaintiff's namely Balaji Sambhaji Bhelonde illegally and unlawfully got mutated the suit properties in his name on the basis of false and fabricated document and will-deed in collusion with revenue authorities as per mutation entry no.221 dated 12-02-1964. The alleged will-deed is mis-placed it shows that the mutation entry is bogus, illegal and unlawful. There is no record produced by the applicant as to how and which basis the suit properties came in the name of Shyamarao Narayan.

05. It is further contended that as per the provisions of Hindu Succession (Amendment) Act 2005, living daughters or living co-parceners are entitled to claim share in the ancestral and undivided Hindu Joint Family property. The Shyamrao Narayan Bhelonde expired in the year 1982, so this application is also not maintainable.

06. The defendants have filed this application for unnecessarily prolonging the matter. The application is devoid of any merit. Hence, prayed for dismissal of the same.

07. Heard learned advocate Shri. S.S. Gopchede for the applicant and learned advocate Shri S.L. Botalwar for the plaintiffs.

08. Considering the application, say and arguments of both parties,

following points arise for my determination and I record my findings thereon for the reasons given thereunder.

<i>Sr.No.</i>	<i>Points</i>	<i>Findings</i>
1	Whether the applicant Gangabai is entitle to be impleaded in the suit as defendants ?	<i>In the affirmative</i>
2	What order ?	<i>As per final order.</i>

REASONS

As to point no. 1 :

09. Perused the record of the case. I gone through the pleadings of both the parties. Considered the arguments of both sides. It is not denied that the present applicant is sister of defendants no.5 and 12. Learned advocate S.S. Gopchede for the applicant relied upon the various documents and record of the case. He has produced the mutation entry bearing no.146 and the copies of 7/12 extract and the certificate issued by Talathi and Police Patil about the heirship of deceased Shayamrao Narayan Bhelonde along with list at Exh. 183.

10. The 7/12 extract of Gut no.163 is produced, it shows the name of defendant no.5 and other persons as owner and the name of present applicant Gangabai Vithalrao and sister Jijabai Shyamrao are mentioned in other rights column. The plaint itself show that the Gut no.163 is suit property as claim clause-B. The applicant also relied upon the documents produced by the plaintiffs a Exh.80, it is the 7/12 extract in which also the name of present applicant and Jijabai are shown in other rights column.

11. The 7/12 extract show the name of present applicant in other rights column of the property of which the plaintiff sought possession. The present applicant also claiming her right/share in suit property. Prima-facie, the interest of present applicant in suit property can not be denied.

Opportunity of hearing to present applicant is necessary to be given. If opportunity of hearing is denied then there will be multiplicity of proceeding. The applicant may suffer irreparable loss. In such circumstances I am of the view that this application deserves to be allowed.

12. The matter is more than 6 years old. The evidence of plaintiff is over. The record shows that many interim applications like impleadment of party, framing of preliminary issue are given on the behalf of defendants. The counsel for the defendants and present applicant is the same. The delay cause can be compensated by way of costs. Considering the fact that suit is old one and the plaintiff comes to court from Nagpur, I end of the view that, heavy cost is necessary to be imposed. This application deserves to be allowed. *Hence I answer the point no. 1 in the affirmative.*

As to point no. 2 :

13. Considering the affirmative finding to point no. 1, as the applicant is entitled to be heard, this application deserves to be allowed with heavy cost. Hence, I proceed to pass the following order.

ORDER

1. Application at Exh.173 is allowed subject to cost of Rs. 4000/-.
2. The applicant Gangabai Vitthalrao Patil R/O Vannali Tq. Degloor is allowed to be impleaded as defendant in present suit.
3. The applicant is directed to deposit the cost into the court on or before next date, without fail.
4. The plaintiff is directed to carry out the amendment in Exh.1, for adding the applicant as defendant after depositing into the court the cost of said application.

sd/-

(R.V. Nadagadalli)

Civil Judge J.D. Naigaon Bz.

Date : 15-04-2017.

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment are same word to word, as per the original Judgment.

Name of the Stenographer : P.N. Karre,

Court Name : Court of Civil Judge Jr.Divn., Naigaon (Bz).

Date : 15-4-2017

Judgment signed by the Presiding Officer on : 15-4-2017

Judgment uploaded on : 15-4-2017