

Order Below Exh. 19

This is an application filed by plaintiffs under Order I Rule X of Code of Civil Procedure for addition of party. According to plaintiffs after filing of suit defendant No. 2 Gayabai transferred the land Gut No. 71 of Jambrun an area 60 R in the name of son of defendant No. 1 by name Bhaurao S/o. Govind Dave, accordingly the revenue officers granted mutation No. 883 of Jambrun in the name of son of defendant No. 1. On perusing the 7/12 extract the plaintiffs came to know the said fact and collected 7/12 extract on 21.11.2023. The plaintiffs at the time of filing of the suit in para No. 6 pleaded the husband of defendant No. 3 Shobhabai by name Venkatrao S/o. Shankarrao Tekale, R/o. Dabhad got mutated 82 R khari land of Dabhad, which is ancestral of the plaintiff and defendants. The name of husband of defendant no. 3 recorded in 7/12 extract. The appellants reserve their right to claim legal share in the land mutated in the name of Venkatrao S/o. Shankarrao Tekale, accordingly on perusing the record wants to add and amend the plaint accordingly.

2. Plaintiffs want to add Bhaurao S/o. Govind Dave and Venkatrao S/o. Shankarrao Tekale as party defendant. Plaintiffs want to add in claim clause no. 1 after claim (C) following property permitted to add as claim (D).

Claim 1(D) : Land Gut no. 191 of village Dabhad, Tq. Ardhapur Dist. Nanded an area 2 H 46 R, land revenue Rs. 4-28 ps. To the extent of 81 R lying in the name of Venkatrao S/o. Shankarrao Tekale.

After para No. 6 plaintiffs want to add following para No. 6-A The defendant

No. 3 Gayabai illegally transferred the land Gut no. 71 of Jambrun an area 60 R in the name of defendant No. 4 and accordingly mutation entry No. 883 granted, exerted the name of defendant no. 4 in 7/12 extract. In fact defendant no. 3 mother of plaintiffs by name Gayabai not entitled to transfer or mutate the said land in the name of defendant No. 4. The defendant no. 4 does not acquired any right or interest in the said land as the plaintiffs are having their legal right in the said land. As per contention of plaintiff, the partition yet not effected by metes and bounds.

3. The land Gut no. 191 of Dabhad an area 81 R is the ancestral property acquired in the family of plaintiffs and defendants no. 1 to 3. The husband of defendant no. 3 by name Venkatrao S/o. Shankarrao Tekale illegally mutate the said land in his name, the defendant no. 5 Venkatrao aware the said land is the ancestral property and no partition effected among the members of joint family. The plaintiffs are having their legal share in the said land. The defendant no. 5 does not acquired any right or interest in the land Gut no. 191 of village Dabhad, the transfer of said land in the name of defendant No. 5 without consent of plaintiff and it is the joint family ancestral land. The plaintiffs are entitled to claim their legal shares in the land G. No. 191 of Dabhad.

4. Accordingly plaintiffs want to make changes in valuation of suit and pay requisite court fees. Finally prayed to allow the application.

5. Defendants filed their say and opposed this application. According to defendants, at the time of filing of suit. It was necessary to add party to Venkatrao S/o. Shankarrao Tekale. The application filed by plaintiff is so late

Gayabai gifted property Bhaurao S/o. Govind Dave before knowledge at the present suit that is sold acquired property to defendant no. 2. So no need add party to Bhaurao. Hence, prayed to reject the application.

6. Read application, say heard learned Advocate for receptive parties. After perusal of record it shows that mutation entry bearing no. 883 is sanctioned on 13.11.2023 as per gift deed executed by Gayabai Dave in favor of Bhaurao S/o. Govind Dave. Since the suit is for partition and separate possession execute of document of gift deed is proper party to decide respective shares. Order I Rule 10 of Code of Civil Procedure contemplates (2) Court may strike out or add parties.—The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where defendant added, plaint to be amended.—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 summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant. Hence, I pass following order:-

ORDER

1. Application is allowed.
2. Plaintiffs are at liberty to add purposed defendant no. 4 Bhaurao S/o. Govind Dave and 5. Venkatrao S/o. Shankarrao Tekale in the array of defendants and carry out amendments in plaint as prayed.
3. Issue notice to proposed defendants to appear and file their written statements. Returnable on 06.12.2023.

Place : Ardhapur.
Dt:- 29/11/2023

Sd/-
(Q.R.Syed)
Jt. Civil Judge, Junior Division,
Ardhapur.