

MHNG180002462013



ORDER BELOW EXH.148 IN R.C.S.
No.24/2013
(Passed on this 22nd January, 2021)

1. Applicant/Intervenor namely Lata Uttamrao Fiske has filed present application under Order I Rule 10 of the Code of Civil Procedure, 1908 (For short 'The C.P.C.') to join her as a party to the suit in the array of the defendants. It is contended in the application that, the present suit is filed for the relief of declaration and permanent injunction. The plaintiff pleaded that, the suit property is ancestral property of the parties to the suit. The plaintiff also have given genealogical tree showing their relationship. However, the plaintiff has not provided complete information of all legal heirs. The applicant further contended that, Ramaji Thakre had son namely Natthu. Nathhu was father in law of defendant no.1. Said Nattuji died leaving behind two sons namely Dadarao (Husband of defendant no.1), Raju and five daughters namely Baby, Shobha, Tara, Jyoti and present applicant Lata. Applicant being daughter is one of the legal heirs of Natthuji. However, she has not joined as a party to the suit. She has interest in the suit property. The plaintiffs have not intentionally joined her as party to the suit. This suit cannot be adjudicated properly without the presence of the applicant. Lastly, the applicant prayed to allow the application.

2. The plaintiffs filed their say vide Exh. no. 150. The plaintiffs contended that, the controversy in the suit revolves around

the relinquishment deed. The plaintiff is the master of suit. The applicant is not necessary party to the suit. She has no interest in the suit. Present application is filed so as to delay the suit. The plaintiff lastly prayed to reject the application.

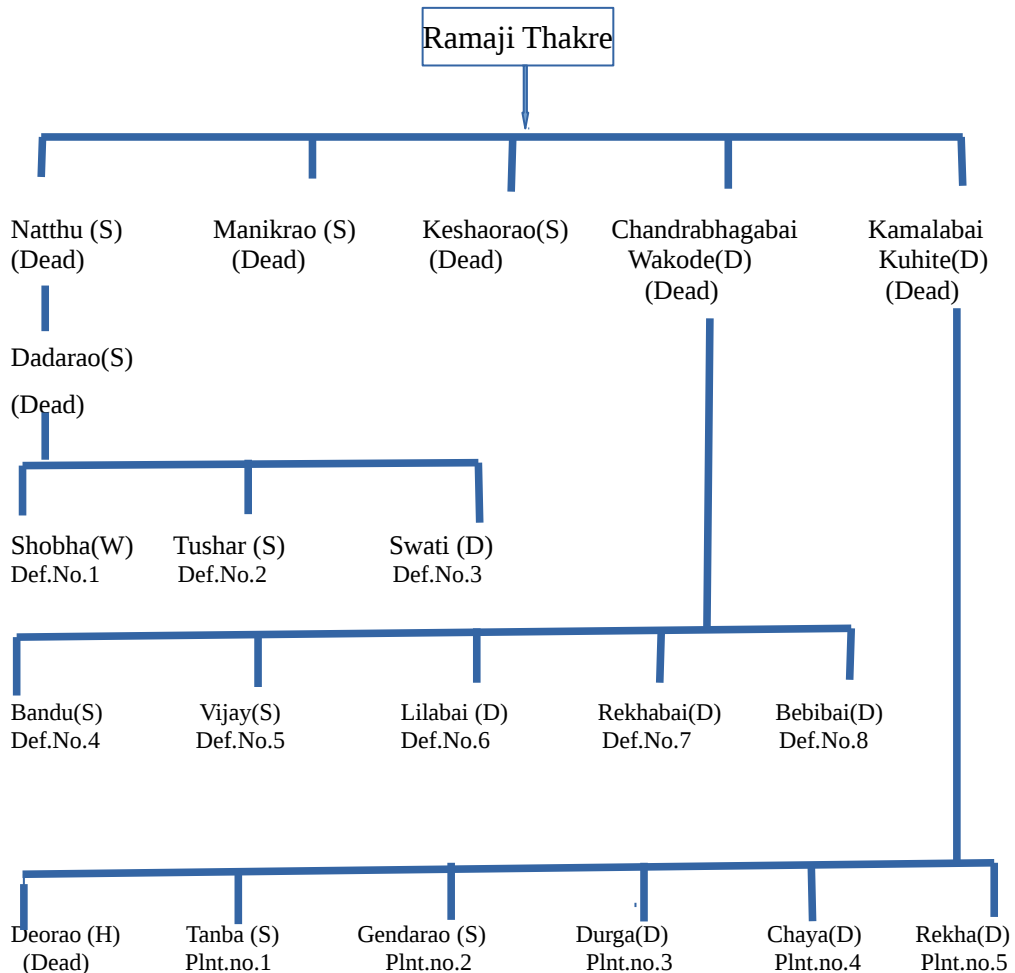
3. Heard, learned counsel Shri V.K. Kautkar for the intervenor and learned counsel Shri Mule for the plaintiff. Gone through contents of the application and say. Before proceeding further, it would be convenient to discuss relevant legal provision of the C.P.C. Order I Rule 10 (2) is reproduced as below:

The Court may at any stage of 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 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 adjudicate upon and settle all the questions involved in the suit, be added.

4. There is essential distinction between a necessary party and a proper party to the suit. A necessary party is one whose presence is indispensable to the constitution of the suit, against whom the relief is sought and without whom no effective order can be passed. A proper party is one in whose absence an effective order can be passed but whose presence is necessary for complete and final decision on the question involved in the proceeding. In other words, in absence of necessary parties no decree can be passed, while in absence of proper party a decree can be passed so far as it

relate to the parties before the Court. His presence, however, enables the Court to adjudicate more “effectually and completely”. It means, in order to add any person as a plaintiff or defendant in the suit, that person must come in the category of either necessary party or proper party.

5. In the present case, in order to ascertain status of the applicant quick review of the facts of the suit is needed. The plaintiff have provided their genealogical tree as follow:



6. Contention of the plaintiffs is that, parties to the suit are legal heirs of common ancestral namely Ramaji Thakre. After the

death of Ramaji Thakre, dispute arose between the parties to the suit. Therefore, they filed Spl Civil suit no. 143/1978 which was compromise between the parties and accordingly compromise decree was passed on 25.06.1979. As per that compromise decree, suit field survey no. 210/9 admeasuring 3 H. 64 R and survey no. 208/1 admeasuring 0.H 40 R came to be allotted to the share of Chandrabhagabi Wakode and Kamlabai Kuhite. Thereafter, Dadarao Thakre i.e. Husband of defendant no. 1 and father of defendant no.2 and 3 claimed that, Chandrabhagabai and Kamalabai executed relinquishment deed in their favor. The plaintiffs took the objection that, no such relinquishment deed was executed in favor of Dadarao Thakre. On this factual matrix the plaintiff filed present suit to declare themselves as the owner of suit property and to restrain the defendants permanently from taking forcible possession of suit property from the plaintiff.

7. During the proceeding defendant appeared in the suit. Defendant no.4 to 8 admitted the contents of the plaint. On the other side, defendant no. 1 to 3 filed their reply vide Exh. no.15. Defendant no. 1 to 3 denied the contents of the plaint. They also took objection that, all legal heirs of Ramaji Thakre are not joined in the present suit. The plaintiff suppressed the material fact from the Court. They contended that, Chandrabhagabai and Kamalabai relinquished their shares out of love and affection towards their nephew. The relinquishment deed was executed in the year 1980. So also, mutation is also done in the revenue record in the name of defendant no. 1 to 3. Right now, they are in possession of the suit property.

8. In order to test the position of present intervener, I have carefully gone through pleadings and documents available on record. It is admitted fact that, the parties had filed previous suit for partition i.e. Spl. Civil Suit No. 143/1978. That suit was between legal heirs of Ramaji namely Natthuji, Manikrao, Kesharao, Chandrabhagabai and Kamalabai. That suit was amicably settled between the parties and compromised decree came to be passed on 25.06.1979. I have gone through certified copy of compromised decree Exh. No.129. As per that decree, ancestral property was distributed between above mentioned legal heirs of Ramaji Thakre. As per that decree, Khasara No.300 admeasuring 1.15 Acre., Khasara no.201 admeasuring 4.36 Acre., Khasara No.203/1 admeasuring 1.75 Acre, Khasar No. 203/2 1.77 Acre, Khasara No.301/2 admeasuring 6.46 Acre, Khasara No.124 admeasuring 0.30 Acre, Khasara No.125 admeasuring 18.09 Acre, Khasara No.210/2 admeasuring 4.30 Acre out of total 13.30 Acre were allotted to Natthuji Ramaji Thakre i.e. ancestor of this intervener.

9. Similarly, Khasara No.316/1 admeasuring 33.19 Acre was allotted to son of Natthuji namely Dadarao and Raju. Apart from this Khasara No.210/2 and Khasara No.208/1 was allotted to the share of Chandrabhagabai Wakode and Kamalabai Kuhite.

10. This document i.e. compromise decree Exh. No.129 is sufficient to show that, ancestral property was distributed between the legal heirs of Ramaji Thakre. This document also shows that, the property was also allotted in the share of Natthuji i.e. ancestor of present intervener. At this juncture, it can be said that property is already distributed in the share of intervener/ applicant. Needless to

mentioned here that, this is not the suit for partition. The plaintiff only challenge alleged relinquished deed executed by Chandrabhagabai and Kamalabai in favor of Dadarao. They have prayed for declaration of ownership and permanent injunction in regard to share which was allotted to Chandrabhagabai and Kamalabai as per compromised deed Exh.No. 129. It means legal heirs of Dadarao, Chandrabhagabai and Kamalabai who are party to this suit are necessary and proper parties. The plaintiffs have not taken any objection in relation to the properties which were allotted to the ancestor of intervener i.e. Natthuji. If this was the suit of partition then, certainly the applicant/ intervener would have been the necessary party owing to her undivided interest in the suit property. But, in the present matter, ancestral property is already allotted to the strip of intervener. Therefore, mere fact that, he is legal heir of Natthuji Thakre is not sufficient to add her party to this suit. I am of the considered opinion that, the applicant/ intervener is neither necessary nor proper party to the proceeding. Furthermore, suit can be adjudicated effectively without the presence of applicant /intervener. Hence, considering the above discussion I pass following order.

ORDER

Application is rejected.

Date : 04/03/2021 .

**(H.N. Pole),
Jt.Civil Judge, Jr. Division,
Kalmeshwar.**

ENDORSEMENT

Application Argued on	:	04.03.2020
Order dictated on	:	04.03.2020
Transcription Ready on	:	04.03.2020
Order checked and signed off	:	04.03.2020

CERTIFICATE

I affirm that the contents of the this PDF file order are same word to word, as per the original Order.

Name of the Stenographer :- R.M. Parmal (Lr. Gd)