

Order below Exh. 23 in R.C.S. No. 37/2022

1] Defendants have filed the present application under order VII rule 10 of the Code of Civil Procedure (hereinafter referred to as the Code). The contention of defendants is that the name of Maharashtra Government is reflected in 7/12 extract of the suit property. Further, the suit property is allotted to the father of defendant No. 1 namely Chintaman Chaudhari by Forest Department. It is necessary to add Forest Department and SDO, Nashik party in present suit as parties. Therefore, the suit is not filed within the jurisdiction of this Court and prayed for return of plaint.

2] Plaintiffs have filed their Say below the application. They have contended that they have not claimed any benefit against Forest Department. They have challenged the Will of deceased Chintaman Chaudhari. The suit is filed before appropriate Court. Therefore, they prayed for rejection of an application.

3] Perused application, Say and record. Heard learned advocates for parties. They have argued in tune with their application, Say and record.

4] Plaintiffs have filed this suit for declaration that the Will dated 30/06/2020 does not confer any right in favour of defendant No. 1. Further, they have prayed for the declaration that the said Will is illegal. They have also prayed for perpetual injunction against defendants. The contention of plaintiffs is that the Forest Department allotted the suit property to Chintaman Chaudhari. Plaintiffs and defendant No. 1 are blood relatives of Chintaman Chaudhari. The said fact is not disputed by parties. The contention of plaintiffs that the forest land allotted to Scheduled Tribe is not transferable property. Therefore, Will executed by deceased Chintaman Chaudhari does

not create any right in favour of defendant No. 1. Hence, they filed the present suit and prayed for above reliefs. The Will executed in favour of defendant No. 1 is also admitted by both parties.

5] Section 9 of the Code confers rights that every suit which is not barred by any law is triable by the court having jurisdiction. Defendants have raised first objection that the 7/12 extract of suit property reflects the name of Maharashtra Government. Therefore, the suit is not tenable before this Court. As discussed above the prayer of plaintiffs does not disclose any relief claimed by them against Maharashtra Government or Forest Department. Further, plaintiffs have not made Government or Forest Department as party in present suit. The rule 3 order I of the Code specifically makes provision as to who may be joined as defendants. Plaintiffs have prayed reliefs against defendants. The Will is challenged in present suit and it is executed in favour of defendant No. 1. Further, the decree if passed in favour of plaintiffs, can be executed in absence of Maharashtra Government or Forest Department. Therefore, the objections raised by defendants do not survive in the eyes of law and thus the application is liable to be rejected. Hence, following order-

-: Order :-

- 1] Application at Exh. 23 is rejected.
- 2] No order as to cost.

Kalwan
Date :- 27/07/2022

(D. M. Gitte)
Jt. Civil Judge Junior Division,
Kalwan