

Reg.Civil Suit No.49/2010  
Krushna Vs Ankush

Order below Exhibit No.35:-

1           The defendant Nos.1 to 6 have filed this application to struck of the names of plaintiff Nos.2 and 3 from this suit under Order 1 Rule 10 of the Code of Civil Procedure. In this application defendants have stated that present suit is filed by plaintiff Nos.1 to 3 for partition of the suit properties. The plaintiff Nos.2 and 3 are the son of plaintiff No.1. The plaintiff Nos.2 and 3 are having right in the share of plaintiff No.1, therefore plaintiff Nos.2 and 3 does not have any right with respect to the suit properties. The plaintiffs are claiming partition unlawfully and against the procedure of law. The plaintiff Nos.2 and 3 do not have locus standi to present this suit of partition. Therefore, in the interest of justice names of plaintiff Nos.2 and 3 be struck of from the suit.

2           On the other hand, plaintiffs have filed their say and argument at Exh.36 and stated that this suit is fixed for the stage of hearing on 29-08-2011. Plaintiffs have filed their affidavit of examination-in-chief. Plaintiffs are very much confident that they will succeed the suit. Plaintiff No.1 is 65 years old persons and needs speedy justice, but defendant Nos.1 to 6 do not want to proceed with the suit and for prolonging the justice defendant Nos.1 to 6 have filed

this application. Further they stated that there is no provision under Order 1 Rule 10 of the Code of Civil Procedure to struck of the plaintiffs name from the suit, therefore this application is unlawful and plaintiff Nos.2 and 3 are having their share in the suit properties, therefore, they are necessary parties, hence application be rejected.

3 I have perused the application and say thereon. Heard both learned Advocates.

4 It appears that this matter is at the stage of cross-examination of plaintiff No.2, who has filed his affidavit-in-chief for himself and on behalf of plaintiff Nos.1 and 3. This suit is for partition of the suit properties. It is well settled position of law that in the suit for partition all necessary parties should be brought on record, otherwise suit will be bad for non-joinder of necessary parties. Therefore, in this application at first it is necessary to see whether plaintiff Nos.2 and 3 are necessary parties, for that it is necessary to see who are necessary parties, "Necessary parties are those parties whose right are involved in the suit properties and if that party is not added as a party to the suit, then the right of that party would get affected." So considering the meaning of necessary party, there is no doubt that plaintiff Nos.2 and 3 are having right in the share of plaintiff No.1 and the same position has been admitted by defendants

also. So in such circumstances, it is clear that in this partition suit plaintiff Nos.2 and 3 are having right in the suit properties to the extent of share of plaintiff No.1 and they are having right to get share in the share of plaintiff No.1. Further it appears that plaintiff Nos.2 and 3 alongwith plaintiff No.1 have filed this suit for partition and prayed to get their share partitioned. Therefore, on above discussion, it appears to me that, plaintiff Nos.2 and 3 are the necessary parties, because their right have got involved in the suit properties. Moreover, it will not cause any prejudice to the defendants. If plaintiff Nos.2 and 3 would remain as party to the suit. Therefore, it would not be justifiable to struck of their names from the suit under Order 1 Rule 10 of the Code of Civil Procedure. Hence, I proceed to pass following order.

ORDER

1 Application Exh.35 stands rejected.

(Dictated and pronounced in the open Court)

Date :-15-07-2013

Sd/-  
( A.N. Mane )  
Joint Civil Judge,J.D.,Bhoom