

R.C.S No.159/2018

ORDER BELOW EXH.5A.

1. Present application is filed by plaintiffs for granting leave to reserve the right to sue for partition against defendants in relation to house properties under O-II, R-2 of Civil Procedure Code.
2. This is suit filed by the plaintiffs against defendants for Partition of agricultural land. It is the contention of the plaintiffs that plaintiffs and defendants have house properties and their names have been entered into Grampanchayat record. Accordingly, they are paying property tax of house properties. Plaintiffs further contended that their economic condition is not so good and therefore they are unable to pay stamp fee on claim of house properties. As agricultural land has not been partitioned, they are unable to develop and cultivate the property. Therefore, plaintiffs prayed for partition of agricultural land only. Hence, present application.
3. Despite of giving sufficient opportunities defendants failed to file their say on application and hence no say order has been passed against them dated 19/10/2019.
4. Perused the application. On perusal of record it appears that plaintiffs have filed the suit for Partition of ancestral agricultural land. Through this application plaintiffs are praying for leave of Court to sue the defendants in future for partition in relation to house properties. Here it is to be noted that this application has to be decided on touch stone of O-2, R-2 of Civil Procedure Code. It is settled

principle of law that O-II, R-2 of CPC applies only when suit for various reliefs on the same cause of action is sought to be filed by omitting to sue for a particular relief. It is for this relief which is sought to be omitted needs a leave under O-II, R-2 of CPC for claiming the same in future.

5. Here it is to be noted that R-2 (3) of O-II of CPC provides that 'a person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.' On bare perusal of this provision it appears that Court is empowered to grant leave to the plaintiff to sue for relief in future in relation to same cause of action which he proposed to omit in present suit.

6. It is well said that for deciding application for leave, the scope of enquiry is very limited to the extent of deciding whether the plaintiff has given sufficient cause or explanation for not claiming that relief in the suit. In present matter, plaintiffs contended that their and defendants name have been entered into Grampanchayat record. At present there is no dispute about house properties. Moreover, it is the contention of the plaintiffs that they are not economically able to pay stamp fees on claim of house properties. These reasons given by the plaintiffs appears to be sufficient to grant leave to them. Considering the facts and circumstances it appears that the application is bonafide and it will not cause any prejudice to the defendants. Hence in such facts and circumstances, considering reasons mentioned above it would

be appropriate to grant leave to plaintiffs subject to law of limitation.

Hence, I pass following order:

ORDER

- 1) Application on Exh.5A is allowed.
- 2) Plaintiffs are permitted to reserve the right to sue for partition of house properties against defendants, subject to law of limitation vide O-2, R-2 of Civil Procedure Code.
- 3) Cost in cause.

Sd/-

(H.U.U. Patil)

Date: 22/06/2020

2nd Jt. CJJD, Bhore, Dist. Pune

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CNR NO.MHPU120007862018

Certificate

I affirm that the contents of this P.D.F file Order are same word for word as per original Order.

Name of the Steno : A.A. Shaikh.

Court Name : Smt. H.U.U. Patil

J.M.F.C., Bhore, Dist. Pune.

Date :22/06/2020

Judgment signed by presiding officer on : 22/06/2020

Judgment uploaded on : 26/06/2020."