

MHRG060003152014

Order below Exh. 118 in R.C.S no.48 of 2014

The present application is filed by intervenor - applicants namely 1. Bhaskar Devji Koli and 2. Vitthal Devji Koli under order 1 Rule 10 of The Code of Civil Procedure, 1908 (hereinafter called as CPC) for adding them as defendants in present suit.

2. It is submitted that applicants that one Hari Kamalya Koli was a propositus from which the coparcenery commences. Hari was having five sons out of which plaintiffs and defendants belong to the branch of deceased Ganu. Out of those five sons, father of applicants namely Devji was son of deceased Balya. Deceased Hirya, deceased Kamalya and deceased Nathya adopted Devji. However, after the demised of Hirya Koli father of defendant no 1 to 3 Naga Koli mutated his and his brothers name on the suit properties. For that purpose, wrong relationship was mentioned to the concerned revenue officer. Name of Balya Koli was wrongly omitted as a legal heir. Thereby wrong revenue record is created. Suit properties are in possession of intervenor applicants. They are owners of the same. Suit property is under their cultivation. Suit can not be decided in their absence. If they are not added as parties, they would suffer irreparable loss. They got knowledge about the said suit in the year November 2020. It is further contended that, it is in the interest of justice to allow present application and to add them as defendants in present matter.

3. The application is resisted by plaintiffs by filing their say at Exh. 128 wherein plaintiffs contended that, applicants have not mentioned name of proposed parties as well as their addresses. Deceased Nathya and deceased Kamalya did not have any issues. Deceased Ganu became owner and possessor of suit properties by legal means. Devji was not adopted by anyone. There is nothing on record to prima-facie support applicants claim. Application is devoid of merit. Hence they prayed to reject the application.

4. Defendants filed their say at Exh. 123 and opposed the application. It is contended by defendants that suit properties were orally partitioned in the life time of deceased Naga and deceased Sakharam. Since the suit properties were given to the share of defendants, deceased Balya did not have any interest in the suit properties. Devji was not adopted by anyone. Defendants also claimed to reject the application.

5. Heard Ld. Advocate for applicant Shri. S.H. Deshmukh, Ld. Advocate for plaintiff Shri. S.G. Phadake and Ld. Advocate for defendants Smt. Dhanashri Kamat at length. Ld. Advocates reproduced contents of their application and say respectively during arguments and hence it is not necessary to repeat the same.

6. Considering the rival submissions of the parties, following points arose for my determination. I answer them along with reasoning given below.

<b>Sr. No.</b>	<b>Point for determination</b>	<b>Answer</b>
1	Are applicants entitled to be added as defendants ?	Yes
2	What order?	As per final order

### **REASONS**

#### **As to Points No. 1 and 2 :**

7. It is important to note that this suit is filed for the relief of partition and separate possession. The relationship between deceased Hari and his sons inter-se is not denied. It is contention of applicants that their father Devji was adopted son of Hirya, Kamalya and Nathya. Devji was son of Balya. In the suit for partition, legal representative of deceased Devji are necessary parties. Regarding all other objections about factual matrix, the same shall be decided when evidence of all parties are concluded. Having regard to Order 1 Rule 10 of Civil Procedure Code, all necessary parties to determine real matter in dispute must be added as parties to the suit. The notions behind insertion of this provision is to avoid multiplicity of litigation and all disputes regarding same subject matter ought to be resolved in a single suit. If application is not allowed there will be multiplicity of litigation. No hardship will be caused to present plaintiffs or defendants if present application is allowed. Per contra, if the application is rejected, intervenor-applicants may be denied their right to put forward their claim in this litigation. In order to decide real controversy between the parties, to avoid multiplicity of litigation and to make complete justice, it is necessary to allow present application and to add intervenor-applicants as defendants in present suit. Accordingly, I answer Point No.1 in affirmative.

8. With respect to point No.2, I proceed to pass following order :-

ORDER

1. Application at Exh. 118 is hereby allowed.
2. Applicants namely 1. Bhaskar Devji Koli and 2. Vitthal Devji Koli be added as defendants in present case. Their addresses are mentioned in Exh. 118.
3. Plaintiffs to carry out necessary amendment in the plaint accordingly within the period of 14 days from date of this order
4. The effect of intervenor- applicants acting as defendants in the present suit commences as soon as they are made parties to the suit by way of amendment.
5. As intervenor applicants appeared suo-moto before the court, there is no need to issue fresh summons to them.
6. All parties to take note of this order.

Pen  
Date: 02.11.2022

(Pritesh Deshpande)  
Jt. Civil Judge (J.D)  
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