

ORDER BELOW EXH. 47 IN SPL.C.S. NO. 7/2022

(Houserao Patil Vs. Prakash Patil & Anr.)

1. This is an application under Order 6 Rule 17 of the CPC for addition of joint family properties in the pleadings.

2. It is submitted that, present suit is filed for relief of partition and separate possession. The plaintiff in his plaint added joint family properties undivided family of late Bhimrao. Defendant No. 2 filed his Written Statement and resisted the relief of partition, one of the defence taken by him is in respect of some properties are not put in hotch-potch for partition. Therefore the present application is filed to add agricultural field Gat Nos. 78, 79 situated at village Satpewadi. The plaintiff further submitted that proposed amendment is sought for final adjudication of fact-in-issue i.e. partition amongst undivided family of late Bhimrao. Thus, prayed to allow the application.

3. Defendant No. 1 failed to file Say. On going through record it reveals that to some extent defendant supported the plaintiff's version. Defendant No. 2 by filing Say below Exh. 46 strongly resisted the application. It is submitted that the description of suit property is incorrect. Moreover, the plaintiff had not added the property situated at Dahanu and Fursungi standing in his name. However, he is trying to bring the property owned by this defendant. Therefore, the application is devoid of merits and needs to be rejected.

4. Heard both sides. Perused record.

5. The present suit is filed for relief of partition and separate possession. The plaintiff specifically pleaded that suit property mentioned in para 1A, 1B, 1C are joint family properties wherein defendant by filing his Written Statement claims that all joint family properties are not arrayed in the common hatch-pot. Thereafter, the instant application is came to be filed.

6. Yet injunction application is to be decided, therefore, there is no bar to consider the application for amendment. Now it is necessary to consider proposed amendment to decide the fact-in-issue at finality.

7. As mentioned above, the suit is filed for relief of partition. It is settled principle of law that all joint family properties needs to be put in common hotch-pot to consider the respective shares of the successors. Therefore, whatsoever properties standing in the name of predecessor-in-title of parties to suit or properties acquired from the nucleus of joint family assets are required to be added as suit properties for determination of proper and just shares. Defendant in his Written Statement submitted that the agricultural field Gat Nos. 78, 79 are not arrayed as suit property, thus, to remove the irregularity, the instant application supposed to be filed. If the application is came to be allowed, certainly it would not cause prejudice to either sides. On the other hand it will help for proper adjudication. Hence, I pass following order.

ORDER

- (1) Application is allowed as prayed.
- (2) Plaintiff to carry out amendment on or before next date and submit the amended copy on record forthwith.
- (3) Failure to comply will follow the consequences.

Islampur
Date : 22/08/2023

(M.M. Chitale)
Joint Civil Judge Senior Division,
Islampur