



ORDER BELOW EXH. 57 IN R.C.S NO.19/2017
Mahammad v/s Ilai Gulab Nadaf.
(CNR NO.MHSN070001472017)

This application is filed by third persons namely, Smt. Farjana @ Reshma Gaus Nadaf and Samir @ Juber Gaus Nadaf under Order I Rule 8-A of the Code of Civil Procedure, 1908 (hereinafter will be referred as “C.P.C” in short) for impleading them as defendants in the present suit.

02. Present suit is filed for partition and separate possession. Applicants contended that suit properties were belonging to Gulab Ahamad Nadaf who died on 21/11/2011. Gulab Nadaf is survived by his children and wife. Gaus Gulab Nadaf is also son of deceased Gulab Nadaf. Applicants further submitted that Gaus Nadaf had performed two marriages. Applicant Farjana is the first wife of Gaus and applicant No.2 is the son of Gaus and Farjana. After the death of Gaus Nadaf, suit properties had come to share of present applicants. They are legal heirs of deceased Gaus Gulab Nadaf. Therefore, they are necessary party to this suit. Plaintiffs intentionally did not array to applicants as party to this suit.

03. Applicants further submitted that they have filed a suit before the C.J.J.D, court Palus against present plaintiff and defendant Nos. 5/1 and 5/2 for partition, injunction and declaration. It is further submitted that applicants are necessary parties to this suit. Hence, they prayed that they be added as defendants to present suit.

04. Plaintiff opposed this application by filing his reply vide Exh.64. He contended that applicants did not evidence to show that they are legal heirs. Plaintiff has asked for partition of his ancestral properties therefore, applicants are not concerned with the suit properties. It is further contended that applicants are trying to create complications in the present suit. Hence, this application is not maintainable.

05. Perused the application and reply. Ld. Advocate for applicants is absent for arguments. The Ld. Advocate for plaintiff argued that applicants are not concerned with the suit property. Unnecessarily this application is filed to create complications in the present suit. Thus, prayed for rejection of the application. Applicants have stated that this application is filed under Order I Rule 8-A of the C.P.C, but this provision is not applicable to present suit. Before proceeding further, it is necessary to mention the provision which is relevant for this application. As per order I Rule 10 (2) of the C.P.C, the court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectively and completely to adjudicate upon and settle all the questions involved in the suit, be added. Upon perusal of O.I Rule 10 (2) of the C.P.C appears that any person may be added as a party to the suit on either of the two grounds

- i) when such person ought to have been joined as plaintiff or defendant, and is not so joined; or

ii) when, without his presence, the questions in the suit cannot be completely decided

06. As stated above, this suit is for partition. According to applicants, they are also legal heirs of deceased Gulab Nadaf. Plaintiff is also claiming legal heir of deceased Gulab Nadaf. In such circumstances, present applicants appear to be necessary parties to this suit. They are claiming owners in possession of suit properties on the basis of succession. At this stage, detail evidence from applicants is not necessary. Prima facie it appears that applicants have also right in the suit property. Plaintiff can challenge to the status of present applicants during evidence. Considering above facts, I come to conclusion that applicants are necessary parties in this suit. Their presence is necessary to determine real question in controversy between the parties.

07. As stated above, the presence of present applicant is necessary in order to enable the Court effectually and completely to adjudicate and settle all the questions involved in the suit. All the disputes between the parties cannot be decided in the absence of present applicants. In their absence questions involved in the suit cannot be completely decided and no effective decree can be passed. The presence of present applicant is necessary in this suit of partition.

08. In view of foregoing reasons, application deserves to be allowed. In the result, I pass following order.

::ORDER::

1. Application at Exh. 57 is hereby allowed.
2. The plaintiff is directed to implead present applicants as defendants in the present suit.

3. The plaintiff is directed to carry out an amendment pertaining to addition of party on or before next date.
4. No order as to costs.

Date:22/03/2024
Place: Kavathe-Mahankal

(Arun R. Vyawahare)
Civil Judge, Junior Division
Kavathe-Mahankal.

Certificate

I affirm that the contents of this P.D.F. file /judgment order are same, word to word, as per the original judgment/order.

Name of the Stenographer - H.PHaridas

Court - CJJD and JMFC, Kavathe-mahankal.

Date - 22.03.2024

Order signed by the

Presiding Officer on - 22.03.2024

Order uploaded on -22.03.2024