

ORDER BELOW EXH. 549

The applicant Dyaneshwar Bajirang Awate has filed this application under Order I Rule 10 of the Code of Civil Procedure. He has submitted that, the plaintiffs have filed this suit for partition and separate possession. During the pendency of this suit, defendant No. 2A Janabai Changdeo Awate expired on 16.10.2016. Her son Bajirang Changdeo Awate also expired on 09.11.2016. The persons mentioned by serial No. 2A1 to 2A5 in the application are their legal heirs. Also defendant No. 2A had three sons namely Mohan Changdeo Awate, Vasant Changdeo Awate and Shashikant Changdeo Awate and one daughter namely Aasha Vitthal Patil. The said persons are going to make different applications to join them in this suit. They are the only legal heirs of said Bajirang Changdeo Awate. After the death of defendant No. 2A, the plaintiffs ought to have taken steps. This being the position, they did not take any steps. Therefore, they themselves have filed this application. With such submissions, they have prayed to allow the application.

02. It appears that, the plaintiffs have objected this application by filing their reply vide Exh. 555. They have submitted that, the application is barred by law of limitation. They have also submitted that, it is the sweet choice of the plaintiff to implead the person which he thinks proper. In order to delay the proceeding, this application has been filed. This suit was instituted in the year 1986. Though, the Court did not direct, legal heirs of defendant No. 1 filed their reply vide Exh. 549. With such submissions they have prayed to reject the application. They have also submitted that if the Court comes to the opinion to allow the application, costs of Rs. 10,000/- be

imposed.

03. Legal heirs of defendant No. 1 have also filed their reply vide Exh. 554. They have submitted that though the contents of the application are true and correct, this application has been filed with intent to delay the matter. There are also other legal heirs of deceased Janabai by name Mohan Changdeo Awate, Vasant Changdeo Awate, Shashikant Changdeo Awate and one daughter Aasha Vitthal Patil. They have further submitted that if the Court comes to the opinion to allow the application, all the legal heirs of deceased Janabai be directed to join in this case.

04. I have heard learned Advocates for the plaintiff and the applicant Dyaneshwar Bajirang Awate. So also, I have perused the documents filed by the applicant Dyaneshwar Bajirang Awate. Admittedly, defendant No. 2A Janabai Awate expired. Further, the plaintiff has not specifically denied that, she had four sons by names Bajirang, Mohan, Vasant and Shashikant and one daughter Aasha. They have not also specifically denied the relationships of the persons described by No. 2A1 to 2A5 in the application. Further, on going through the copy of ration card filed as per list of documents at Exh. 553, it appears that, the persons described in the application by No. 2A1 is wife, 2A2, 2A4 and 2A5 are sons and 2A3 is daughter of said Bajirang Awate. This is a suit for partition and separate possession. Admittedly, the original plaintiff, defendant No. 1, defendant No. 2A are the brothers and sister. Therefore, after the death of defendant No. 2A, all her legal heirs ought to have been brought on record in order to determine the real controversy between the parties

05. It appears that, as referred to above, the plaintiffs have

objected the application that, it is the sweet choice of the plaintiff to implead the person which he thinks proper. Considering the nature of the suit I do not find any force in their said submission.

06. It appears that, the plaintiffs have also objected the application on the ground that, the application is barred by law of limitation. Also, I do not agree with their said submission. The applicants have filed this application under the provisions of Order I Rule 10 of the Code of Civil Procedure. Right to sue accrue to them and the persons named in the application in the year 2016. Therefore, at any rate, it can not be said that, the application is barred by limitation.

07. In the light of above, in my considered opinion, presence of the persons described in the application by No. 2A1 to 2A5 is necessary for the determination of the real matter in dispute. Hence, it is just and proper to allow the application. In the result, I pass following order:-

ORDER

The application at Exh. 594 is allowed.

02. The plaintiffs are directed to add the persons named in the application by No. 2A1 to 2A5 as the defendants by same serial number within 14 days from today.

Date : 20.07.2023

(Ankush P. Khanorkar),
Civil Judge, Senior Division, Barshi.

4 R.C.S. No. 594/2012.
Vishwanath & Ors. Vs. Kashinath & Ors.

CERTIFICATE

I affirm that the contents of this PDF file Order / Judgment are same word to word, as per the original Order / Judgment.

Name of the Stenographer : S. N. Chilka
Court : Civil Court Senior Division, Barshi.
Judgment / Order signed by the P. O. on : 20.07.2023
Judgment / Order uploaded on : 24.07.2023