

Reg. Civil Suit No.189/15

Hirabai Shinde V/s. Sharad Shinde.

ORDER BELOW EXH.NO.58

1. Plaintiff has filed the present application under Order 1 Rule 10 (2) of C.P.C. Application is supported by an affidavit of plaintiff No.1.

2. It is submitted by plaintiff that, suit is filed against defendant for declaration, partition and separate possession of suit property. Plaintiff submitted that, suit is compromised between them and as per compromise plaintiff withdraw the suit. Plaintiff No.2 Reshma Rajendra Shinde resided at Ujjain (M.P.) at Sevadham Ashram. Plaintiff No.2 is handicapped. She unable to walk. Plaintiff No.1 is the mother of plaintiff No.2. Plaintiff No.2 is agreed for compromise between plaintiff No.1 and defendant No.1 to 3. She has no objection. The compromise is took place between plaintiff and defendant No.1 to 3 therefore, it is necessary to strike out the name of plaintiff No.2 from the suit.

3. Learned advocate for defendant filed their say over leaf of the application. It is submitted by defendant that necessary order may kindly be passed.

4. Perused the application, say. Heard. Plaintiff filed the suit for declaration, partition and separate possession of suit property against defendant. Perusal of plaint it shows that, plaintiff No.1 is wife of deceased Rajendra Dagadu Shinde. Plaintiff No.2 to 4 are the children of plaintiff No.1 and deceased Rajendra Dagadu Shinde. Suit is for partition and separate possession. Therefore, it is necessary to determine share of each party in the suit. Plaintiff want to strike out the name of plaintiff No.2 from the suit. Before considering the application it is necessary to describe the provision of Order 1 Rule 10(2).

5. Order 1 Rule 10-- suit in the name of wrong plaintiff-- (1) where a suit has been instituted in the name of wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of right of plaintiff the court

may at any stage of suit, if satisfied that the suit has been instituted through a bonafide mistake, and that is necessary for the determination of real matter in dispute so to do, order any person to be substituted or added as plaintiff upon such terms as the court thinks just.

(2) Court may strike out or add parties-- 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 party improperly joined, whether as plaintiff or defendant, be strike out, and 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 effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

6. Plaintiff No.2 Reshma Rajendra Shinde is major. Suit is for partition therefore, it is necessary to determine the share of plaintiff No.2. Plaintiff has not filed document to shows that, plaintiff No.2 is agree for compromise. The copy of plaint specifically signed by plaintiff No.2. Plaintiff has not filed copy of record to shows that plaintiff no.2 has given all the rights in the proceeding to the plaintiff No.1. As per Order Rule 10(2) of C.P.C. the Court may strike out plaintiff or the defendant if they are improperly joined. Considering the record the presence of plaintiff No.2 is necessary for adjudication of suit. Hence, I Pass the following order.

ORDER

Application is rejected.

Phaltan.
Date:14/7/2023.

(P. H. Patil)
3Rd Jt. Civil Judge Jr. Dn. Phaltan.