

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10541 OF 2014

Shaikh Hameed Shaikh Nasir

..PETITIONER

VERSUS

Akhtar Begum Shaikh Nasir and Another

..RESPONDENTS

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Mr. A.P. Gaikwad, Advocate h/f Mr. S.S. Kazi, Advocate for petitioner.

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**CORAM : T.V. NALAWADE, J.
DATED : 23rd SEPTEMBER, 2016**

ORDER :

1. The petition is filed to challenge the order made on application filed under provisions of Order 1 Rule 10 of the Code of Civil Procedure by present Respondent No.2. The suit is filed for relief of partition by present petitioner against his brothers. The said application was moved and the application is allowed.

2. It is the case of Respondent No.2 that he is son of Shaikh Nasir, father of Plaintiff No.1 and defendant but in partition suit he is not intentionally made party to deprive him of his right to have share in the property. It is the case that he is residing in the same portion of the house and when he came to know about pendency of the suit, he approached Court and wants to take share in the partition.

3. Application of Respondent No.1 was opposed by the present petitioner and also by Defendant No.2 of the partition suit. It is contended that Shaikh Nasir married two wives. He had only one son from Plaintiff No.1 i.e. defendant, second wife of Shaikh Nasir.

4. In support of the claim, the intervenor to the present Respondent No.2 filed record like identity card, driving license, etc. On the record name of Shaikh Nasir is shown as father of the present Respondent N.2. On the other hand the learned Counsel submitted that plaintiff had produced on record marriage of intervenor to show that he had not given name of Shaikh Nasir as his father.

5. On the basis of record available, Trial Court has held that opportunity needs to be given to the intervenor to prove his claim by joining in the suit. As there is record of aforesaid nature, this Court holds that the Trial Court has not committed any error in allowing the application. There is no room to interfere in the order of the Trial Court. Hence petition is dismissed.

(T.V. NALAWADE, J.)

SSD