

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6149 OF 2017

Hiraman Devram Kadu and ors ... Petitioners

Vs.

Gurunath D Kadu and ors ... Respondent s

Mr. Girish R. Agrawal, for the Petitioners

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 12, 2017**

P.C. :

1. This petition is directed against the order dated 16th February, 2017, passed by the 2nd Joint Civil Judge Senior Division, Nashik, below exh. 104 in Special Civil Suit No.928 of 2011. The plaintiff has filed suit for partition and declaration. Plaintiff claims that he belongs to tribal community. After the cross examination of the plaintiff, plaintiff moved an application under Order I, Rule 10 of Code of Civil Procedure for amendment of plaint to the effect that 20 persons are to be added as party defendants. The said application was opposed by respondent -original defendants.
2. After hearing the parties, learned trial Judge rejected

the application. Hence this writ petition is filed.

3. Learned counsel for the petitioner submits that this order is illegal and is required to be set aside. Learned counsel pointed out the written statement filed by defendants wherein they have taken objection of non-joinder of necessary parties. He submits that in the cross examination also, plaintiff was put a question in respect of non-joinder of necessary parties and therefore, in order to overcome this mistake, plaintiff i.e. petitioners have moved this application under Order I Rule 10 of Code of Civil Procedure. He submits that the proposed defendants are women, who are married to other persons and therefore, they are required to be made party defendants in the suit. He submits that the plaintiffs are from tribal community and hence the provisions of Hindu law are not applicable.

4. Perused the genealogy given in the plaint disclosing the family tree. However, the names of proposed defendants are not seen in the genealogy. Moreover, in the application filed by plaintiff, no details are given as to how the proposed defendants are related and/or how they are formal and necessary parties to be added in the suit. Hence for want of this explanation order passed below exh.104 in Special Civil Suit NO.928 of 2011, dated

16.2.2917, by the learned 2nd Jt. Civil Judge Senior Division, Nashik cannot faulted with. No interference is required. Learned counsel for the petitioner submits that he wants to file another application under Order 1 Rule 10 of Civil Procedure Code giving details as to how proposed defendants are formal and necessary parties. Petition is dismissed.

(MRIDULA BHATKAR, J.)