



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 164 OF 1999 (O.S)

ROHIT A. SHAH & ANR.PLAINTIFFS

VERSUS

MOHANLAL L. SHAH & TWO OTHERSDEFENDANTS

R U L I N G

This is the application by Reena Sunil Sah for an order that she be joined in this suit as an Interested Party on the ground that she is a co-owner of L.R. 209/96/31 which is one of the properties the subject matter of preliminary decree in this suit dated 28.2.2001. She deposes that as joint owner of the property she was not consulted when the preliminary decree was recorded by consent.

I have considered the grounds of opposition and submissions of the Respondents Counsel.

The certificate of title for L.R. No. 209/96/31 shows that Applicant and Sunil Amitlal Shah and Reena Sunil Shah (Applicant) are the proprietors of the land as tenants in common in equal shares. The certificate of title however show that the terms is for 42 years from 1/4/2002. That land is a subdivision of the original land whose term was 99 years from 1/4/1904 – 1/4/2003.

We do not know the nature of the application that the Applicant intends to make. If she is joined as a party prima facie the certificate of title considered together with the original title show that applicant has an interest in the land. Whether her interest has vested presently or will vest in the future is an issue to be considered in the application that Applicant intends to make.

At this stage it would be preemptory and prejudicial to the Applicants case to make a final decision on the status of her title.

I am satisfied that Applicant has shown prima facie that she has an interest on L.R. 209/96/31 which is affected by preliminary decree to which she was not a party and that she should be allowed to join in the suit.

Consequently I allow her application to the extent that I order that Reena Sunil Shah be joined as a co-plaintiff – (3rd plaintiff) for purpose only of pursuing her interest in L.R. No. 209/96/31. Costs in the cause.

E.M. GITHINJI

JUDGE

4.7.2002

Mr. Miller for applicant – present also holding brief for Mr. Murgor

Mr. Aboge holding brief for Mr. Odera present

Mr. Aboge:

I seek leave to appeal against the ruling.

E.M. GITHINJI

JUDGE

ORDER

Leave to appeal if required by the Rules is given as prayed.

E.M. GITHINJI

JUDGE