

ORDER BELOW EXH.32 IN R.C.S NO.311/2016.

01. Perused application and say filed by defendant No.1 at Exh.34. Gone through record. Heard learned Advocates for the parties at length.

02. Present application is filed by plaintiff under Order VI, Rule 17 of C.P.C. for amendment of pleadings stating that plaintiff has filed present suit for partition against defendants. According to the plaintiff, while drafting the pleadings, sister of plaintiff namely Pushpa Vitthal Pandit is remained to be added who is necessary party to the present suit.

03. According to the plaintiff, proposed amendment is necessary for proper adjudication of the matter and if it is allowed, the nature of the suit will not change and there would be no prejudice to defendants. Hence, the application.

04. Application is opposed by defendant No.1 stating that the proposed amendment is not made within time and at the earlier stage. According to the defendant No.1, now, the trial has been commenced and the present application made only to prolong the matter. Hence, he prayed for rejection of the application with costs.

05. Careful perusal of plaint reveals that in the array of the plaint as well as in the genealogy, name of proposed defendant is not mentioned. However, it is not disputed by the defendant that proposed defendant namely Pushpa Vitthal Pandit is sister of the plaintiff. Admittedly, when she is sister and a co-parcener, she is necessary party

without whom, the matter can not be adjudicated properly. Hence, the proposed amendment is necessary and it will not change the nature of the suit. However, record reveals that on 17/04/2017, trial has been commenced and present application is made on 15/07/2017. Hence, the application deserves to be allowed subject to compensating defendant No.1 for delay in filing the present application. Hence, I pass the following order :-

ORDER

1. Application is allowed subject to costs of Rs.300/- to defendant No.1
2. Plaintiff to carry out proposed amendment within 14 days from today and submit amended plaint accordingly.

Place : Shevgaon
Date : 10/10/2017

(A.N. Kulkarni)
Jt. Civil Judge, Jr. Dn., Shevgaon.