

MHAU040001552020



RCA No.8/2020

Sudam Narayan Gaikwad Vs. Baban Narayan Gaikwad and 2

Order below Exh.13

(Dated : 29.01.2026)

1. Appellant has moved this application under Order 10 Rule 2 of C.P.C. for including Hari Sarjerao Gaikwad in the present appeal.
2. It is averred that the learned trial court has dismissed RCS No.231/2016 which was filed for partition and separate possession on the ground that the suit bad for non-joinder of parties. Therefore, in order to decide the suit on merit, the said party is required to be impleaded in the present appeal. It is submitted that for effective adjudication of the appeal the presence of proposed party is necessary in the present appeal. Hence, it is prayed to allow the application.
3. The respondent filed reply and strongly resisted the application on the ground that the appellant ought to have arrayed the necessary party before the learned trial court. Now at this stage the application is not maintainable. With this, it is prayed to reject the application.
4. Heard submissions of learned counsel of appellant . He made submission in consonance to the application. To buttress his submission is

relied upon **Pandurang Sitaram Pande and another Vs. Avinash Ramkrishna Pande and others 2016 AIR CC 3089 (BOM) in Second Appeal 567 of 2004 decided on 04.08.2016**, wherein, it is held that,

“Order 1, Rule 10(2) of the Civil Procedure Code. The aforesaid provision confers a discretion upon the court to permit 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 to effectively and completely to adjudicate upon and settle all the questions involved in the suit, be added at any stage of proceedings. The second appeal being continuation of the suit, this court is competent to exercise discretion even at the second appellate stage to permit the joinder of necessary parties to the suit. Once such permission is granted and the parties are joined as defendants/ respondents in the proceedings, the order relates back to the date of filing of the suit and the defect stands cured”.

5. Having considered the facts of the suit, admittedly, the suit of plaintiff i.e. appellant was dismissed on the ground that the suit is bad for non-joinder of necessary party. Thus, in order to decide appeal on merit, the proposed party can be arrayed and impleaded as party in the present appeal. Admittedly, the respondent has raise objection as non-joinder of necessary party. Considering the nature of suit as all co-heirs and co-owners are necessary party to the suit. Therefore the presence of proposed party is necessary to decide the appeal on merit. No prejudice is going to be cause to the respondent as the respondents will have opportunity to argument on the merit of the case. Hence, in view of aforesaid discussion and in cumulative result, I pass the following order -

Order

1. Application is allowed.
2. The appellant is directed to carry out amendment accordingly and filed amendment appeal within fortnight.

Date : 29.01.2026

(S.K.Upadhyay)
District Judge,-1,Vaijapur