

MHAU050003002020



RCS No.45/2020
Gorakh Vs. Gangadhar

ORDER BELOW AMENDMENT APPLICATION

The plaintiff has filed this application under Order 6 Rule 17 of Civil Procedure Code, 1908. This is suit for partition, declaration and permanent injunction. This is post trial amendment before the filing of evidence affidavit of plaintiff.

2. Heard learned advocate of both the sides. Perused application and say. Issues are framed and the case is fixed for evidence of plaintiff. The plaintiff has filed this application for induction of some of the third persons in whose favour suit property is transferred. The plaintiff is apprehending the dismissal of suit on the ground of non joinder of necessary parties. The defendants strongly argued by defending that this is second time plaintiff is making amendment in the suit. The said transactions were took place before the institution of suit. The plaintiff knows this fact but omitted to implead those persons as defendants in the suit. He has in-advertantly not made

these persons as parties at the time of filing of suit. Thereafter during pendency of this case plaintiff died. His legal heirs are taken on record. While filing the said application for bringing the legal heirs on record the plaintiff should have made these averments in that application itself. However plaintiff in second time failed to add these persons as defendants of suit. This is clear case of negligence and deliberately misusing the procedure of court.

3. After considering both the submissions following points framed by me and answered accordingly.

Sr. No.	Points	Answers
1.	Whether the proposed amendment is necessary ?	Yes
2.	What Order ?	Application is allowed.

REASONS

AS TO POINT NO.1 :-

4. Admittedly issued are framed and the case is fixed for evidence of plaintiff. This is clear case in which the plaintiff has failed to add transferees as the

defendants second in time before filing this application. Originally the plaintiff has filed this suit and during the pendency of this suit the plaintiff died and his wife Sunanda along with her son and daughter appeared on record as legal heirs of plaintiff.

5. Considering the pleading and the condition of parties and the circumstances under which they are living it would not be accepted from them that they would give proper instructions to their advocate. If the proposed amendment is not allowed and the proposed defendants are not made parties to the suit and suit is decreed the result would be fatal.

6. This is a suit of partition in which all the properties should be taken at common hotchpot and partitioned as per the shares of co-parceners. If the possession of property is disputed after passing of decree the allotment of share is not effectively possible as per the share determined by the court. These persons may take objections in the execution of a decree if it is put for execution. It is clear case of negligence and inadvertence in order to make reasonable and proper pleading for effective adjudication of case. But it would not be resulted into miscarriage justice. Considering this future failure of suit and in order to avoid it amendment is necessary. The

learned advocate for plaintiff relied on the case of,

Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and others, Civil Appeal No.6921 of 2007, 2009 (3) BCJ 292 SC. It is held by Hon'ble Supreme Court that,"Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party Applying, was acting *mala fide*, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. *However negligent or careless may have been the first omission, and, however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side*". (Emphasis Added).

As per ratio of this case the amendment is necessary and the proposed defendants are necessary parties to the suit as such they shall be impleaded as defendants for proper and effective as well as complete adjudication of the case. As such I answer issue No.1 in affirmative and I pass following order;

ORDER

1. Application is allowed.
2. The plaintiff shall carry out amendment as per contentions of this application within 14 days from today.
3. No order as to costs.

Date : 18.07.2023

D. S. Pisal
Jt. Civil Judge (J.D.),
Vaijapur.

CERTIFICATE

I affirm that the contents of this P.D.F. file judgment are same, word to word, as per the original Judgment.

Name of the Stenographer : Varsha Ajit Andurkar.
Stenographer

Court : D. S. Pisal
J.M.F.C., Vaijapur.

Judgment delivered on : 18.07.2023

Judgment signed by the
presiding officer on : 19.07.2023

Judgment uploaded on : 19.07.2023