

Order below Exh. 47 in Regular Civil Suit No. 16/2013

CNR No. MHDH070000502013
(Bhatabai Vs. Shevantabai Bari and others)

Suklal Magan Bari and Shankar Magan Bari have filed present application to implead them as defendants under Order 1 Rule 10 of the Code of Civil Procedure, 1908.

2] The application is that, this is a suit for partition in respect of block No. 369 situated at Dahiwad, Tal. Shirpur, Dist. Dhule and City Survey No. 919 situated at Shirpur. The common ancestor of the plaintiff and defendants was Pandu Lala Bari. He has son Khandu and daughters Rupabai and Gopabai. The applicants in this application are sons of deceased Rupabai. The defendants have mentioned said fact in their written statement. As well they have raised issue of non joinder of necessary party. Said applicants are not impleaded in the suit, they are necessary parties. Their names have been recorded to the record of right of suit properties as legal heirs of Rupabai. Hence, they be impleaded as defendants in the suit.

3] The plaintiff has filed his on the backside of the application. It is contended that, the application is filed at belated stage. The applicants' interest has been protected as per written statement of the defendants. They are not necessary party in the suit. Hence, application be rejected.

4] The existing defendants have filed his on the backside of the application. They have contended that application is filed at belated stage. The applicants are not necessary parties in the suit. Hence, application be rejected.

5] Heard learned advocate Shri. S.P. Marathe for the applicants,

learned advocate Shri. N.S. Sonawane for the plaintiff and learned advocate Shri. U.S. Gujrathi for the defendants. They have submitted as per their contentions.

6] Order 1 Rule 10 of the Code of Civil Procedure provides that, Court may at any stage of the proceeding on such terms as may appeared to the Court to be just order that any person be added as a defendant whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settled all question involved in the suit.

7] It is clear from above provision that, such order can be passed at any stage of the proceeding. Therefore, it can not be accepted that, the applicants have made delay in filing application, hence, application is liable to be rejected. Now, question arises whether presence of applicants is necessary as defendants. This is a suit for partition. Head of each branch is necessary party in such suits. The common ancestor has three heirs i.e. Khandu, Rupabai and Gopabai. The applicants and existing defendants have not disputed that, applicants are legal heirs of deceased Rupabai. Therefore, the applicants represents Rupabai as a head of their branch. Therefore, their presence before the Court is necessary. Hence, application deserves to be allowed. Therefore, order as under :

Order

1. Application is allowed.
2. The plaintiff to add applicants as defendants in the suit.
3. The applicants have already appeared in the suit, hence they shall filed their written statement within stipulated period from date of carrying out amendment in the plaint.

Shirpur
Date 19.01.2019.

(S.S.Deshmukh)
2nd Jt. Civil Judge, (J.D.) (Court No. 3)
Shirpur.