



**Jaywantrao Chimaso Nimbalkar & Ors Vs.
Nanaso Annaso Nimbalkar and Ors**

CNR - MHKO130006382015

ORDER BELOW EXH. 140 IN R.C.S.No. 140/2015

1. This application is filed by Plaintiff No. 7 to 12 vide Order 6 Rule 17 of the Code of Civil Procedure for amendment in the plaint. It is submitted that some of the properties have not been included as subject matter of suit property in the present suit. It is submitted that since the present suit is filed for partition and separate possession it is necessary to add the remaining properties as subject matter of suit property for final adjudication of dispute. It is submitted that initially Plaintiff No. 7 to 12 were added as party Defendants in the suit and later on they were transposed as Plaintiffs. It is submitted that during the cross-examination it revealed that the daughter of original Plaintiff No. 1 namely Jayavant had filed Special Civil Suit bearing No. 507/2019 in the Court of Civil Judge Senior Division. It is submitted that the present applicants got knowledge about this fact only during the evidence in present suit. It is submitted that all the properties which have come from the original male ancestor namely Govindrao Annasaheb Nimbalkar needs to added as subject matter of suit property therefore the proposed amendment be allowed.

2. Per contra Defendant No. 1 to 4 filed their Say at Exh. 141 and submitted that applicants were not at all diligent in filing the present application. The evidence of Plaintiff has concluded and the suit is posted for evidence of Defendant. In such

circumstances the application being devoid of merits be rejected.

3. Heard learned counsel for both the sides. Perused the record. On perusal of record it reveals that the original Defendant No. 7 to 12 i.e. the present applicants have been transposed as Plaintiffs in the present suit. Record reveals that the original Plaintiff have filed the suit for partition and separate possession and thereafter issues are framed and the oral evidence of Plaintiff has been concluded. Record also reveals that the original Plaintiff No. 1 to 4 have compromised the appeal pending before the Additional Collector, Kolhapur and therefore they were not interested to proceed with the suit. It reveals that therefore in view of the order dated 16/01/2023 the present applicants vide Order 23 Rule 1(a) of the Code of Civil Procedure were arrayed as Plaintiff to protect their interest.

4. Considering the nature of suit being for partition it is necessary to bring all the suit properties within the common hotchpotch. Though the evidence of Defendant has commenced and the trial is in progress reasons mentioned by the applicants are well founded and reasonable for carrying out proposed amendment. Considering the fact that the present applicants were initially added as party Defendants there was due diligence on the part of applicants because they were arrayed as Plaintiffs later on. Also proposed amendment is certainly necessary to decide the real controversy between the parties and allotment of shares at the time of partition. Therefore application deserves to be allowed. Accordingly I pass following order.

ORDER

1. Application is allowed.
2. Plaintiff is permitted to amend the plaint as proposed in the application.
3. Defendant is permitted to file additional Written Statement if any with respect to proposed amendment.
4. Plaintiff to carry out amendment within statutory period and supply amended copy forthwith.

Kagal
Date:- 29/08/2026

(A.B.Madke)
Civil Judge Junior Division,
Kagal.