

**ORDER BELOW EXH.18 IN R.C.S. NO. 122/2013.****Mahadev Satuppa Patil Vs. Shankar Subhana Patil**

The suit is filed for partition and separate possession. By application filed at Exh.18 vide Order I, Rule 10(2) and section 151 r/w. Order VI, Rule 17 of the Code of Civil Procedure, 1908, the plaintiffs sought amendment in the plaint by impleadment of 6 persons as defendants No. 9 to 11 and 11-A to 11-C in the clause title of the plaint. Therefore, according to the plaintiffs, for determining rights, title and ownership of the parties in the suit, these persons are required to be joined in the suit as defendant No. 9 to 11 and 11-A to 11-C. These are plaintiffs sisters. Thus, the plaintiffs have prayed accordingly. The names of proposed additional defendants are given in para 3 of the application. The plaintiffs have further contended that, these persons are required to be added in the suit and accordingly cause title of the plaint is required to be amended. Further, the plaintiffs have contended that, if the amendment in prayed terms is not granted, they will suffer irreparable loss which can not be compensated in terms of money. On the contrary, if these parties are added, the defendants will have no loss or prejudice of any kind. The application is supported with the affidavit of plaintiff No. 2.

2. The defendants have filed their say overleaf of the application and strongly objected the application and prayed for reject the application with costs.

3. Heard, Adv. Shri. V.G. Desai, for the plaintiffs and Adv. Shri. V.R. Patil, for the defendants at length.

4. Admittedly, hearing of the suit is in progress. If the provision i.e. Rule 17 of Order VI of the Code is strictly applied, such amendment can not be allowed at this stage. However, the *Hon'ble Bombay High Court, in the case of Mangal Harilal Doshi Vs. Sarvadaman Mansukhlal Doshi and Ors., 2003(1) Mh LJ 390*, has held that, 'the power to allow the amendment is vide and can be

exercised at any stage of the proceedings. While it is true that the amendment can not be claimed as a matter of right under all circumstances. It is equally true that the Court while deciding prayers for amendment should not adopt the hyper technical approach. Amendments are allowed in pleading to avoid uncalled for multiplicity of litigation. 'Admittedly, the parties to whom the plaintiffs propose to make parties in the suit are not parties to the suit. Further, there is a proposition of a law that, plaintiff is 'dominus-litis'. Therefore, it is the prerogative of the plaintiffs to seek relief against anybody. If at all, the proposed persons are necessary parties, no expertise is required to understand that, the suit may probably fail for that reason. When the plaintiffs are ready to add these persons as parties to the suit, the defendants should not have any objections as there is no hardship causing to them. The application in hand is filed on 26/03/2021. The plaintiffs have not filed this application as soon as the objection is raised by the defendants but belatedly. Therefore, delay is caused in progress of the suit. For that reason the plaintiffs are under obligation to compensate the other side by payment of costs. Hence, following order.

ORDER

The application below Exh.18 is allowed subject to costs of Rs. 2,000/-. The cost be credited to the State.

The plaintiffs are allowed to implead the persons whose names are mentioned in the para No.3 of the application, as defendants No. 9 to 11 and 11-A to 11-C.

The plaintiffs shall carry out necessary amendment in the title clause of the plaint within 14 days from date of this order and also to file amended copy of the plaint with copies of it in sufficient numbers to supply them to all the defendants along with the copy for preparation of decree.

Payment of costs shall be condition precedent.

Date. 14/09/2023
Chandgad.

(C.U. Shipkule)
Civil Judge Junior Division, Chandgad.