


MHKO140004912016 	Regular Civil Suit No.37/1973 Dattu Gopal Patil Vs. Dundappa Subrao Kole
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ORDER BELOW EXHIBIT- 314

(Date 18.11.2025)

1. This is an application filed by plaintiffs for addition of party to present suit vide **Order 1 Rule 10 (2)** of the Code of Civil Procedure, 1908.

Contention of the plaintiffs:

2. The plaintiffs submitted that, they have filed present suit for possession and means profit. The present suit involved the trust property and the plaintiffs are trustees of the suit property. After filing of the suit some new trustees are added in the trust. Those newly appointed additional trustees are necessary party to the present suit. As per law, in the suit for possession of trust property, all the trustee must be added as plaintiffs. If they are not added or joined then the suit will be affected with non-joinder of necessary party. Therefore, the additional trustees needs to be added as plaintiffs in the present suit. Their presence is necessary in order effectively and completely adjudicate upon and settled the questions involved in the present suit. Hence, the present application.

3. The learned advocate for defendants filed say and raised strong objection. It is submitted that, the contents of the application are false. The proposed parties have no concerned with the present suit. There is nothing on record to shows that the propose parties are trustee and they are having interest in the suit property. There is no reason to have the knowledge to the advocate of plaintiff. The plaintiff is only prolonging the suit and the application is beyond limitation. The proposed parties have not given consent to add them as party to the present suit. This application

is not tenable under Order 1 Rule 10 (3) of the Civil Procedure Code. The present suit is old one and the application at this stage is not tenable. Hence, it is prayed to reject the application with costs.

4. Perused the record. Heard the learned advocate for both side. Following point arise for my determination. I have recorded my findings along-with my reasons thereon as under.

Sr no.	POINTS	FINDINGS
1	Whether the proposed parties are necessary party and whether he can be added as party to the suit?	Yes
2	What Order?	As per Final Order.

REASONS

As to points nos.1 and 2

5. The learned advocate for defendants mainly argued that, the proposed parties not appeared before the Court and not filed their affidavit on record in support of this application. It is argued that, there is huge delay in filing present application. It is filed with intention to prolong the matter. Hence, the application is not tenable.

6. It is necessary to see the relevant provisions regarding addition of party. Present application is filed under order 1 Rule 10 of the Code of Civil Procedure.

10. Suit in name of wrong plaintiff.—

(1)(2) Court may strike out or add parties.—The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that

the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that 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 effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

7. The learned advocate for plaintiff relied on *Amit Kumar Shaw and another Vs. Farida Khatoon and another {2005(3) Mh.L.J. 330}* in this case the Hon'ble Supreme Court, the object of Order 1, Rule 10, Civil Procedure Code is to discourage contests on technical pleas, and to save honest and bona fide claimants from being non-suited. The power to strike out or add parties can be exercised by the Court at any stage of the proceedings. Under this Rule, a person may be added as a party to a suit in the following two cases : (1) When he ought to have been joined as plaintiff or defendant, and is not joined so; or (2) When, without his presence, the questions in the suit cannot be completely decided. The power of a Court to add a party to a proceeding cannot depend solely on the question whether he has interest in the suit property. The question is whether the right of a person may be affected if he is not added as a party. Such right, however, will include necessarily an enforceable legal right.

8. In view of the aforesaid provision and guidelines of the Hon'ble Supreme Court, it is clear that, if the parties have interest in the suit property then they have to be added as necessary party. It is true that, the present suit is filed in the year 1973. It is more than 40 years old. There is no dispute that, the trust property is involved in the present matter. The plaintiffs on affidavit stated that, the proposed parties have interest in the trust property and have to be added as party to the present suit.

9. On perusal of the record. It is seen that, the plaintiff has filed present suit for recovery of possession. It is specifically pleaded that the suit property belongs to Kalmeshvar Dev Trust, Kalkundri and the said trust is registered. It is pleaded that the plaintiff is managing trust of the said trust. So, it is seen that the plaintiffs have filed present suit as trustee and claiming relief in respect of the trust property. Now, by way of present application plaintiff on affidavit stated that, some new trustees are being appointed in the said trust and therefore they are necessary party. It is also seen that the plaintiffs have filed on record, change report in the year 2017 which prima-facie shows that the proposed parties are trustees of the aforesaid trust.

10. It is seen that, the matter is more than 40 years old. It is also seen that, the present matter is remanded for fresh trial on the various technical irregularities. As stated above, the plaintiffs on affidavit stated that the proposed parties have interest in the suit property. So, in order to avoid technical irregularities and complications in the future, it would be proper to add the said proposed parties as plaintiffs. However, whether those parties are trustees or not. Whether, they are having any interest in the suit property, these questions can be considered in the trial. But at this stage in view of the guidelines of the Hon'ble Bombay High Court in **Amit Kumar Shaw and another Vs. Farida Khatoon and another**, it would be proper to allow the present application.

11. So, considering the facts and circumstances, I am of the view that the proposed parties are necessary party. As the change report is filed on record, which prima-facie shows that, the proposed parties have relation with the trust. Therefore, in order to decide the matter on merit and completely, necessary parties have to be added. It is seen that, the change report is accepted in the year, 2017. But, till filing of present application, the plaintiffs have not filed taken any steps for addition of

party. Long delay is caused. Therefore, it is necessary to impose cost of Rs.4000/- for causing delay. Considering the objection of other side, it is necessary to direct the proposed party to appear in person and file affidavit in respect of whether they are interested in proceeding with the suit or not. Accordingly, I pass following order.

ORDER

1. Application is allowed subject to cost of Rs.4000/-.
2. The proposed parties as named in the application be added as plaintiffs to the present suit.
3. Plaintiffs to carry out amendment on or before next date without fail.
4. The proposed parties are directed to appear before the Court in person and file affidavit in support of the present application. On failure further consequential order will be passed
5. Cost is payable to otherside.

Date: 18/11/2025

[Waman D. Jadhav]
Jt. Civil Judge Junior Division, Chandgad.