

:: ORDER BELOW EXH. 41 IN R.C.S NO.279/2008 ::
(Bapurao/Kishanrao)

01. This is an application filed by plaintiff u/o 6 R.17 R/W order 1 R.10(2) of CPC seeking permission to amend the plaint.

02. Facts of the application in short are as under :

Plaintiff has filed suit for partition and separate possession of his share from the suit property. It appears that defendants in their W.S raised the objection that suit is bad in law for non-joinder of necessary parties. It appears that after framing the issues and cross-examination of plaintiff, present application is filed seeking permission to amend the plaint and thereby seeking permission to add sisters of the plaintiff and defendants as defendant in this suit and some other amendments pertaining to addition their sisters and legal heirs of sisters. According to plaintiff suit is for partition of ancestral properties and therefore all concern are to be parties to the suit. Hence this application.

03. On the other hand, the defendant filed his say to this application and strongly opposed to allow the application. It is the contention of defendant that plaintiff has filed present application with intention to fill-up the lacuna. It is also submitted that said application is filed after the commencement of trial and on that ground application is deserved to be rejected. With this they prayed for rejection of application.

04. Having heard learned advocates for the both the parties and considering rival pleadings following points arose for my

determination and I have recorded my findings thereon along with detailed reasons to follow :

	P O I N T S	F I N D I N G S
1)	Whether amendment sought by the plaintiff is necessary for determining the real question in controversy between the parties?	Affirmative
2)	Whether application deserve to be allowed?	Affirmative
3)	What order?	As per final order

REASONS

05. Prior to going into merit of application it would be appropriate to have look at order 6 R.17 of CPC. On careful reading of this provision it becomes clear that application for amendment can be allowed at any stage, if amendment is necessary for the purpose of determining the real question in controversy between the parties, provided that trial has not commenced. After commencement of trial also application for amendment can be allowed if court comes to conclusion that inspite of due diligence, the party could not have raised the matter before commencement of trial. So also as per order 1 R.10(2) court may at any stage of proceeding, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that name of any party in properly joined be struck out and that the name of any person who ought to have been joined, whether as a 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.

06. from the perusal of said provision it becomes clear that court can add any person as a party to the suit at any stage if

presence of that person is necessary. Present suit is filed by the plaintiff seeking the partition ancestral property and therefore certainly all the sisters of the plaintiff and the defendants are the necessary parties for complete adjudication of the matter and hence application needs to be allowed. So far as casual approach on the part of plaintiff in filing this application is concerned i.e after commencement of trial, that can be balanced by imposing the cost on the plaintiff. However for that reason application in question should not be rejected.

07. Having heard learned advocates for both the parties considering nature of amendment, I came to conclusion that amendment sought by the plaintiff is necessary for the determining real question in controversy between the parties. No any prejudice will be caused to the defendants, if these application is allowed. In view of aforesaid discussion I came to conclusion that application is deserve to be allowed. In result point nos. 1 & 2 are answered in affirmative. Hence, I pass following order:

:: O R D E R ::

- 1) Application at exh.41 is hereby allowed.
- 2) Plaintiff shall carry out necessary amendment in the plaint within 07 days from the date of order and file the amended copies of the plaint on record and also supply to the parties to the suit.

Date : 24-02-2015.

{ K.G. Sawant }
3rd Jt.Civil Judge J.D,
U d g i r.
