

ORDER BELOW APPLICATION VIDE EXH.133 IN
R.C.S.No.138/2012.

(Rambhau Vs. Bala & Others)

01. This is an application filed by Plaintiff for addition of parties under Order 1 Rule 10 of Code of Civil Procedure.

02. It is contention of the plaintiff that, the suit is filed for declaration and permanent injunction. The defendants have specifically pleaded name of daughter of Late Anandrao Kedar i.e. Smt. Chabibai Rajeshwar Hood who is not party in the suit. Chabibai Hood died on 27.08.2008. So far as the legal heirs of Chabibai Hood is concerned it is necessary to bring on record the legal heirs. Hence, Proposed parties are necessary to be impleaded as party defendants No.8 to 17. Hence, prayed to allow the application.

03. Defendants have filed say overleaf the application and resisted the same. It is contention of defendants that, the application is bad in law and not tenable. The application is barred by limitation. The suit is of specific performance and not partition of suit property. The proposed the defendants are not necessary in suit for specific performance and when on 20.03.2006 the plaintiffs have not shown Chabibai as party in the plaint. No sufficient reasons are given why Chabibai was not made party at the time of filing of suit and after 16 years the application is barred by limitation. Defendants would be prejudiced by way of injury to legal right of defendant. Only to delay, the present application made due to counter claim of defendant No.1. Hence, application be rejected.

04. Heard Ld. Adv. M.C.Khangare for the plaintiff and Ld. Adv. R. R. Thaore for legal heirs of defendant No.1. Considering the rival

contentions of the parties following point arise for my determination and I have given my findings along with the reasons thereon.

Sr. No.	Points	Findings
1.	Whether the presence of the applicant is necessary in order to enable the court effectually and completely adjudicate all the questions involved in the suit ?	Affirmative.
2.	What Order ?	As Per Final Order

REASONS

05. It is pertinent to note here that, Order 1 Rule 10 provides the power of Court to add and strike out parties 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. It is pertinent to note here that, the Court has to decide whether as plaintiff or defendant or whose presence before the Court is necessary to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added. The Apex Court has also observed the test for impleading parties is that, the person concerned must have a direct interest in the action. The Apex Court in the case of Amit kumar vs. Farida Khatun reported in 2005(3) Mh.L.J.-330 ruled that the power of Court to add a party to the proceeding can not solely depend upon the question whether he has interest in the suit property. The question is whether the right of person may be effected if he has not added as a part. Such right, however, will include necessarily an enforceable legal right.

06. Considering these legal provisions to the facts in the present matter has to be considered. I have gone through pleadings of both the parties. It is pertinent to note that, The claim of plaintiff is for specific performance of contract and perpetual injunction and not for declaration. It is pertinent to note here that, the plaintiff has specifically pleaded that, suit property is ancestral and was in the name of father of plaintiff Anandrao Kedar. After death of Anandrao Kedar name of plaintiff, defendant Nos.1, 6 and 7 and Chabibai a daughter of Late Anandrao Kedar was having undivided share in the suit property. The plaintiff has specifically contended that, defendant No.1, 6 and 7 were ready to pay money to the plaintiff of their undivided share. Chabibai have expressed her desire to relinquish her undivided share to the plaintiff without any consideration. On perusal of written statement the original defendant No.1 has nowhere denied that, Chabibai is not daughter of Late Anandrao Kedar.

07. Certainly the burden is upon the plaintiff to prove the relinquishment of Chabibai to the contract which was decided between parties as alleged by the plaintiff in the suit. At the same time it is also necessary to give an opportunity to Chabibai Hood who has a legal enforceable right in the ancestral suit property. The proposed legal heirs of Late. Chabibai Hood have certainly inherited such legal right and certainly an opportunity has to be granted to L.Rs. of deceased Chabibai Hood, considering the principle of natural justice. Thus, It can be said that, the proposed defendants are necessary parties to the suit and in absence of proposed defendants effective Judgment can not be passed and the proposed defendants are having interest in the suit property and also has their legally enforceable right in the suit property. However, for delay in bringing the proposed defendant on record plaintiff has to pay reasonable cost and Rs.1000/- would be just and proper.

08. Hence, considering all these facts and legal position, I answer point no.1 in the affirmative and for point no.2 I pass following order.

:: ORDER ::

1. The application vide Exh.133 is allowed subject to cost of Rs.1000/- (One Thousand only) to be deposited in Court.
2. The plaintiff is permitted to implead proposed defendant Nos.8 to 17 in the title clause of the plaint as prayed.
3. Cost in cause.

[Dictated and pronounced in the open Court.]

Date: 18/07/2022

(R. B. Kulkarni)
Jt. Civil Judge, Jr. Division,
Saoner.