

MHNG180011452019

ORDER BELOW EXH. 13**Bhimrao & Ors .Vs. Sudhakar & Ors.****(Passed on this 02nd December, 2021)**

1] Present application is filed by the plaintiffs Under Order 1, Rule 10 r/w. Order 6, Rule 17 of the Code of Civil Procedure for amendment in the plaint and addition of party.

2] It is contended in the application that, the plaintiffs recently came to know that, defendant No. 1 purchased house of Kumre, in the name of his son Yogesh Sudhakar Bodhane. This house is recorded in the name of Yogesh Sudhakar Bodhane as house property No. 53. Yogesh have encroached upon the north side 5 feet wide lane. Therefore he is necessary party in the suit. By this application the plaintiffs prayed to add him as a defendant and also prayed to amend the plaint in respect of his encroachment.

3] Defendants filed their say vide Exh. 17, wherein they denied the adverse suggestion of the plaintiffs. They contended that, the proposed amendment is vague and it is going to change the nature of suit. Proposed defendant purchased the said house on 28.07.2014. The plaintiffs was well aware about this. On these grounds they prayed to reject the application.

4] Heard Ld. Counsel Shri S.S. Gaidhane for the plaintiffs and Shri R.R. Thaware for the defendants. By this application the plaintiffs wants to add her son namely Yogesh Sudhakar Bodhane as defendant and amend the plaint in respect of alleged encroachment on his part.

Before proceeding further I would like to note here that, Order 1, Rule 10 says that, a person may be added as a party to the suit in the following two cases.

- i] When he ought to have been join as a plaintiff or defendant, and is not joined so.
- ii] When, without his presence, question in the suit can not be completely decided.

5] On the other hand, purpose of Order 6, Rule 17 is to avoid multiplicity of proceeding and to bring all the questions between the parties in one suit. Ld. Counsel for the plaintiffs submitted that the name of proposed defendant left to be added due to want of knowledge about the ownership of suit property. He argued that, the proposed defendant is son of defendant No. 1. Furthermore, suit property and property of proposed defendant is adjoining to each other. He also have made encroachment over the lane. I considered submission advance by Ld. Counsel. In order to decide this application it is necessary to answer following two questions.

- i) Whether proposed amendment going to change the nature of suit ?
- ii) Whether proposed defendant is necessary party to the suit ?

6] So far as first question is concern, it is needless to mention here that the original suit is filed for the relief of declaration, permanent injunction and mandatory injunction. The plaintiff prayed to remove entire construction of the defendants shown in the plaint map. If, the proposed amendment is allowed, then it is not going to change the nature of suit and relief sought. The suit will be the same. Therefore, I

am of the opinion that, nature of suit is not going to change at all. Rather, bringing all the controversy in one suit would help to avoid further litigations.

7] So far as second question is concern, I would mention here that, person can be added as a defendant, if no decree can be passed without his presence, or his presence will help to pass effective decree. So far as this case is concern, plaintiff contended that, the proposed defendant also have encroached over the lane. Therefore, I am of the considered opinion that, proposed defendant is necessary party to the suit. Other party has ample opportunity to amend the written statement and resist the suit. Therefore, no prejudice would be caused to them. On the other hand, rejection of this application would be birth to further litigations. Hence, considering the above discussion, I pass following order.

ORDER

1. Application is allowed.
2. Plaintiffs shall carry out necessary amendment in the plaint forthwith.
3. Yogesh Sudhakar Bodhane shall be added as defendant.
4. Issue suit summons to newly added defendant on P.F.

Kalmeshwar.
Date 02/12/2021.

(H. N. Pole)
Jt.C.J.J.D., Kalmeshwar,
Dist. Nagpur.

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ENDORSEMENT

Case heard on	:	02.12.2021
Order dictated on	:	02.12.2021
Transcription Ready on	:	02.12.2021
Order checked and signed off	:	02.12.2021

C E R T I F I C A T E

I affirm that the contents of the this PDF file order are same word to word, as per the original order.

Name of Stenographer:- R. S. Daware (Gr. III)