

**ORDER BELOW EXH. 56 IN R.C.S. 45/2012**

The present application is filed by the plaintiff for amendment into the plaint vide Order VI Rule 17 of the Code of Civil Procedure, 1908. The Ld. Advocates of defendants filed their say on same application and strongly opposed the amendment application.

2] Perused the application supported with an affidavit of the plaintiff, Say filed by Ld. Advocates of defendants and record of the case. Heard Ld. Advocates of both the parties. The following points arise for my determination I have recorded my findings thereon for the reason stated thereunder.

<b>SR.NO.</b>	<b>POINTS FOR DETERMINATION</b>	<b>FINDINGS</b>
1]	Whether the amendment in the plaint is a necessary for the purpose of determining the real question in controversy between the parties ?	Yes.
2]	What order ?	The application is allowed.

**REASONS**

**AS TO POINT NO.1 :-**

3] The Ld. Advocate of the plaintiff contended that, the suit is filed for partition and separate possession of the suit properties. However, at the time of filing of the suit, the son of defendant No. 2

namely Madhukar Tabaji Bhivar was already dead. But, his legal heirs were not made party to the present suit. Therefore, suit is bared by principles of non joinder of necessary parties. Therefore, to avoid these circumstances it is necessary to amend the plaint by bringing legal heirs of deceased Madhukar Tabaji Bhivar.

4] The Ld. Advocate of the plaintiff further contended that, the legal heirs of deceased defendant No. 3 were brought on record. However, deceased defendant No. 3 had a son Nilkhant Sitaram Hire. However, his legal heirs were not brought on record. Therefore, it is necessary to bring the legal heirs of deceased Nilkhant Sitaram Hire on record by making necessary amendment into the plaint.

5] The Ld. Advocate further contended that, such kind of amendment is formal in nature and it will not cause any prejudice to defendants. On the contrary, if the amendment is not allowed. Then, the plaintiff will suffer irreparable loss. He lastly prayed for making necessary amendment into the title clause of the plaint.

6] The Ld. Advocate of defendant No. 3 E-1 to E-4 filed his say and contended that, they have their share into the suit property. However, plaintiff have not deliberately added them parties to the suit. He further contended that, the necessary orders may be passed for making amendment into the plaint.

7] The Ld. Advocate of defendant No. 1-A, 1-B (1) to 1-B(3), 1-C and 1-D contended that, Nilkhant Sitaram Hire was died prior to

filing of this suit. However, his legal heirs are not brought on record at the time of the filing of the suit. The application is time barred. He further contended that, if Court comes to the conclusion to allow the application, then 10,000/- compensatory costs be imposed upon the plaintiff.

8] The record of the case shows that, the present suit is filed for partition, separate possession and mense profit and perpetual injunction of the suit property. The death of Nilkhant Sitaram Hire and Madhukar Tabaji Bhivar is not much more disputed. The plaintiff has fairly admitted in the application that, he had failed to add the legal heirs of these deceased persons. On consider the nature of the suit, the legal heirs of deceased are the necessary parties to the present suit. The legal heirs as well as the plaintiff have statutory rights involved into the Subject matter of the suit. Therefore, the proposed amendment is necessary to determine the real controversy between the parties. The proposed amendment will not changed the basic nature of the suit. Hence, I answer point No. 1 in the affirmative.

**AS TO POINT NO.2 :-**

9] I have recorded my findings on Point No. 1 in the affirmative. The amendment into the plaint is necessary for determining the real question in controversy between the parties. The amendment application deserves to be allowed. Hence, I pass the following order.

**ORDER**

- 1] The application is allowed.
- 2] The plaintiff should carry out necessary amendment into the plaint within 14 days from the date of this order.
- 3] The plaintiff should furnish the copy of amended plaint on record within 14 days and on the same day, its copy be supplied to defendants and take appropriate steps.

Date :- 20/09/2017.

Sd/-  
( Manikrao R. Satav )  
Civil Judge Junior Division  
Pimpalgaon (B).