

ORDER BELOW EXH.120 IN R.C.S.NO. 62/2010

Present application is by the Plaintiff. No.1 and 2 alone under order six rule 17 of the code of civil procedure. They have submitted that Plaintiff no.3 is the son of defendant No.4 from the first wife. Through this application, they have prayed that Plaintiff no.1 be deleted from the suit. There is no necessity of conducting the matter in presence of Plaintiff no.3 as his father is already party to suit. Hence, Plaintiff nos.1 and 2 have insisted for the application to be allowed. The Plaintiff no. 3 has strongly resisted this application on the ground that such an application is not maintainable. Moreover, Plaintiff no.3 has pointed out that he has moved a separate application for the addition of few parties. During the pendency of this application, this plaintiff has moved an application of such a nature merely with an intent of prolonging the matter. Hence, rejection of the application is insisted upon. The Defendant have given a say that appropriate order be passed.

2. I have gone through the application and say. I have heard both sides on this point. I have minutely considered the citation that Plaintiff no1 and 2 have relied upon- In Jagdish and Ors Versus Har Sarup AIR 1978 Delhi, 233 an application for amendment was allowed even in an appeal.

3. Further, observation made in Sunil Goyal Versus Additional District Judge, Court No.8 , Jaipur City, Jaipur and

ORS. , Civil Misc. Writ Petition NO.11899/2010 too is on the same lines.

4. I have gone through the application and say. I have heard both sides on this point. I have considered citation on this point. In preset matter the suit is instituted by three Plaintiffs. Whereas, the present application is moved by two Plaintiffs against Plaintiff no.3. The same is not permissible in the eyes of law. On this ground itself the application seems to be not maintainable.

5. Secondly, while it is true that an appeal is a continuation of suit and an amendment even therein can be permitted but this does not free the Plaintiff from the obligation of proving his due diligence. The stage of suit is already evidence part heard. There is nothing to show that Plaintiff was due diligent. Hence, the Plaintiff no.1 and 2 are not entitled to any benefit of the citation. Accordingly, I proceed to pass following order-

ORDER

1. This application is rejected.

Date : 29.03.2023

(K. N. Gowariker)

Civil Judge Junior Division,

Dindori.