

ORDER BELOW EXH. 129 IN R.C.S.NO. 62/2010

Present application is by the plaintiff. No.3 alone under order six rule 17 of the code of civil procedure. He is the son of defendant No. 4 from the first wife. Through this application, he has prayed that Certain persons be added to the suit. According to him, if these persons are added to the suit, then it would assist the court in adjudicating the matter in totality. Hence, he has insisted upon application to be allowed. The plaintiff no. 1 and 2 have strongly resisted this application on the ground that such an application is not maintainable. Moreover, plaintiff no.1 and 2 have pointed out that they have moved a separate application for the deletion of Plaintiff no. 3. 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 has also raised strong objection. According to him, this application has been moved, after the commencement of trial. Without showing due diligence, Present application is worthy of rejection.

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 no. 3 has relied upon. Herein the circumstances in which amendment application is to be allowed liberally is stated. It is observed that all amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. The real question in this matter is partition. For partition suit, the father of Plaintiff no. 3 and father of proposed parties are already a party to the suit. The share of Plaintiff no. 3 and proposed parties will flow through their respective fathers. Their presence will not add any value to the present suit. It will not affect the shares. Under such circumstances, I observe that the present amendment is not necessary for deciding real controversy. Thus, this citation is of no use to the Plaintiff no. 3.

3. Further, it appears that the matter was posted for cross examination when Plaintiff no. 1 and 2 and Subsequently, plaintiff no 3 moved this application. Hence, as per the provisions of law, in this matter, Plaintiff no. 3 was duty bound to show the due diligence that he has followed. There is no whisper in this respect. It is difficult to ascertain what resisted him from moving such an application at a prior point of time. This is an old matter of the year 2010.

4. Moreover, I have observed that this suit is by three plaintiffs and the present suit is moved by Plaintiff no. 3 in individual capacity. The Plaintiff no. 1 and 2 do not support this application. Order 6 Rule 17 of the Code of Civil procedure does not provide that one Plaintiff can obtain an amendment order against the remaining Plaintiffs. If permitted it would not fall within the four corners of law. Under such circumstances, the present application is not tenable and in accordance, I proceed to pass following order-

ORDER

1. This application is rejected.

Date : 29.03.2023

(K. N. Gowariker)
Civil Judge Junior Division,
Dindori.