

ORDER BELOW EXHIBIT-49
(Passed on this 19th day of October, 2023)

This is an application filed by the plaintiff under Order I Rule 10 of Code of Civil Procedure, 1908.

2. The plaintiff contended that during pendency of the suit defendant No.4 Changdeo Gopa Jadhav has transferred his land Gat No.116/125/1/3 adm 01-H, 21-R and said property is mutated vide mutation entry No. 1572 in the name of his son namely, -Kamlakar Changdeo Jadhav. Hence, plaintiff intend to add name of Kamlakar Changdeo Jadhav as defendant No.5.

3. It is the case of the plaintiffs that, in order to adjudicate the suit on merits addition of proposed defendant and proposed amendments are necessary. The proposed defendant is necessary party in the suit. Hence, plaintiff prayed for allow the application.

4. The defendant No. 1 has filed his say vide Exh. 52, he contended that the contention in the application are imaginary one. Defendant No. 1 has purchased the land vide registered sale deed. The said sale deed is not bogus one. The defendant No. 4 Changdeo Gopa Jadhav is already party of the suit, therefore, addition of his son as party is not necessary. Lastly, prayed for rejection of the application.

5. The defendant Nos. 2 to 4 have not filed their say. Hence, this application proceeded without their say.

6. Following points arise for my determination and my findings thereon and reasons thereof are as follows:

Sr. No.	Points	Findings
1.	Whether the presence of proposed party is necessary to enable the Court to adjudicate upon and settle all the questions involved in this suit completely and effectually?	Yes
2.	What order?	The application is allowed.

REASONS

AS TO POINT NO. 1 AND 2:

7. Perused the record and proceeding. The instant application would have to undergo the test as per Order I Rule 10(2) of the Code of Civil Procedure, 1908. It provides that the court may at any stage of the proceedings and on just terms struck out or add any person whose presence before the Court may be necessary in order to enable it to effectually and completely adjudicate upon and settle all the questions involved in the suit. It thereby provides that only a necessary or a proper party may be added in a proceeding.

8. Perused record and heard plaintiff and defendant No. 1. The present suit is for perpetual injunction and recovery of possession.

9. It appears from the record that during pendency of the suit defendant No.4 Changdeo Gopa Jadhav has transferred land Gat No.116/125/1/3 adm 01-H, 24-R and said property is mutated vide mutation entry No. 1572 in the name of his son namely, -Kamlakar Changdeo Jadha. Hence, plaintiff intend to add name of Kamlakar Changdeo Jadhav as defendant No.5.

10. It is worthy to note here that though during pendency of the suit defendant No. 4 has transferred his land to said proposed defendant, however, he is proper party in the suit as the suit is for perpetual injunction and recovery of possession.

11. Considering the aforesaid facts, it is necessary to note that in order to support his case the plaintiff has filed on record copies of 7/12 extracts. Perusal of the said mutation entry No. 1572 showcase that defendant No. 4 transferred his aforesaid land to the proposed defendant No. 5 who is his son. It is necessary to note that at this stage it would not be proper to discuss the rights of the parties. However, considering the nature of the suit it is necessary to note that the presence of the proposed defendant is necessary to enable the court to adjudicate effectually and completely and settle all the questions involved in the suit. Therefore, the proposed defendant is necessary party in the suit. In his absence effective decree cannot be passed. In such circumstances, it is not only just and desirable but necessary to add him as a party to the suit for deciding the real controversy between the parties on merits and for avoiding multiplicity of litigation. Hence, considering the above discussion, I am of the view that the present application is deserves

to be allowed. Hence, I answered point No. 1 in affirmative and in answer to point No.2 following order is passed.

ORDER

1. The application is allowed.
2. The plaintiff is allowed to add name of Kamalakar Changdeo Jadhav as defendant No.5 in the plaint.
3. The plaintiff is directed to carry out necessary amendments in respect of addition of proposed defendant in the plaint within fourteen days from the date of this order.
4. The plaintiff is directed to supply copy of amended plaint after carrying out the amendment.
5. Issue summons to the new defendant after filing amended plaint.

Date: 19-10-2023

sd/-

(Shyam S. Kalaskar)
Civil Judge, Junior Division,
Lohara.

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment are same word to word, as per the original Judgment.

Name of the Stenographer : R.M. Kokare
Court Name : Shri. S.S. Kalaskar, CJJD Lohara.
Date : 19-10-2023
Judgment signed by the
Presiding Officer on : 19-10-2023
Judgment uploaded on : 20-10-2023