



ORDER BELOW EXH.34 IN R.C.S. NO.536/2021

(CNR No.MHOS-10001361-2021)

This is an application filed by plaintiffs under Order-I, Rule-10 of the Code of Civil Procedure, 1908 (in short “C.P.C.”) for addition of Dilip Dattatraya Kale as defendant No.11 in the suit.

2] According to plaintiffs/applicants, they have filed suit for partition and separate possession against the defendants. Defendant No.5 is claiming right through one Dilip Dattatraya Kale, but said Dilip is not made party as a defendant in the suit. Said Dilip is necessary party in the suit as per written-statement filed by the defendants. If Dilip is added as defendant in the suit, nature of the plaint will not be changed. Said Dilip is using his name at somewhere as Dilip Sandipan Patil and somewhere he is using his name as Dilip Dattatraya Kale. The plaintiffs are willing to mentioned his name in the plaint only as Dilip Dattatraya Kale. The proposed amendment is very formal in nature and it will not change the structure of the plaint. Hence, plaintiff may be permitted to amend the plaint by adding Dilip Dattatraya Kale, Age : 55 Years, Occ: Agri., R/o. Kategaon, Tal. Barshi, Dist. Solapur as defendant No.11 in the suit.

3] Defendants No.1 to 3 and 10 failed to file their say on the present application despite sufficient opportunities. Hence, the application proceeded without their say.

4] Defendants No.4 and 6 to 9 resisted the application by filing say on the overleaf of the application. According to them, the application filed by plaintiffs is contrary to the provisions of law. After filing of written-statement by defendant, in order to fill up the legal lacunae, plaintiffs have filed the present application. It was necessary on the part of plaintiff to array all the parties in the suit at the time of filing of suit. Therefore, they prayed for rejection of the application.

5] Heard Ld. Advocate Shri. R.V. Mote for the plaintiffs and Ld. Advocate Shri. P.K. Kothawale for defendants No.4 and 6 to 9. Perused application, say and documents filed on record.

6] Points for determination along with findings are as follows :

<u>Points</u>	<u>Findings</u>
1. Whether presence of Dilip Dattatraya Kale is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit ?	..Yes.
4. What order ?	The application is allowed.

REASONS

As to Point No.1 :

7] As per Order-I, Rule-10(2) of C.P.C., a person can be joined as plaintiff or defendant if his presence before the Court is necessary in order to enable the Court effectually and completely adjudicate upon and settle all the questions involved in the suit. However, at this stage is would not be proper to go into the merit of the case and hold inquiry as to whether the applicant has rights in the suit property or not. The

real test for ascertaining the presence of the party would lie in answer to the question as to whether the party has any interest in the suit and if the answer is yes, the presence of the party would become necessary. The reason being that a party having interest is most likely to be affected directly and substantially in its rights by a decision in the suit. However, proper care has to be taken to ensure that the interest of the party is real and direct, and is not based upon a claim which has no direct relation with the subject matter or cause of action of the suit or the reliefs claimed in the suit. Moreover, the power of the Court under this sub-rule is to be exercised judicially keeping in mind that one of its objects is to prevent multiplicity of suits and conflict of decisions. However, a mere fact that a fresh litigation can be avoided is no ground to invoke the power under this rule.

8] According to plaintiffs, defendant No.5 is claiming right through one Dilip Dattatraya Kale and said Dilip is necessary party in the suit as per the written-statement filed by the defendants. At this juncture, it is important to note that defendants have not denied the said contention of plaintiffs *vide* their say. The present suit is filed for the relief of partition and separate possession. Under such circumstances, if according to plaintiff defendant No.5 is claiming right through one Dilip Dattatraya Kale, it is obvious that Dilip is necessary party to the suit and a decree passed in his absence will have an adverse effect directly and substantially on his rights. Similarly, such decree will not be effectively executable. In such circumstances, it is not only just and desirable but necessary to add Dilip Dattatraya Kale as defendant No.11 in the suit for deciding the real controversy between the parties as once on merits and for avoiding multiplicity of litigation.

9] It is also necessary to note that, the addition of Dilip Dattatraya Kale will not change the nature of the suit, nor it will cause any prejudice to the other defendants. Resultantly, application deserves to be allowed. Accordingly, finding as to Point No.1 is recorded in the affirmative.

As to Point No.2 :

10] In view of affirmative finding to Point No.1, the application deserves to be allowed. So far as the question of awarding costs is concerned, it is necessary to consider the fact that due to lapse of time, the defendants have suffered delay and inconvenience. Therefore, delay and inconvenience caused to defendants needs to be compensated by imposing costs of Rs.300/- on plaintiffs. Accordingly, I pass following order :

ORDER

1. The application is allowed subject to costs of Rs.300/- (Rupees Three Hundred only) to be paid by plaintiffs collectively to defendants No.4 and 6 to 9 in equal proportion.
2. Dilip Dattatraya Kale, Age : 55 Years, Occ: Agri., R/o. Kategaon, Tal. Barshi, Dist. Solapur be added as defendant No.11 in the present suit.
3. The plaintiffs are directed to make necessary amendments in the plaint and to file its amended copy immediately for service of suit summons to defendant No.11.
4. Issue suit summons to newly added defendant No.11 after filing of amended plaint.

Date : 15.02.2023

Place : Washi

(H.M. Momin)

Jt. Civil Judge, Junior Division,
Washi