

ORDER BELOW EXH. 29 IN RCS NO. 225/2013
(Dattatraya Kshirsagar V/s Suryakant Kshirsagar)

1] The application is purported to have filed under Order VI Rule 17 of Code of Civil Procedure.

2] According to plaintiff, the co-priest of Veer Mhaskoba temple are necessary party to the suit as per averments made in the written statement. The presence of said co-priest would be necessary to decide the matter on merit. The plaintiff also contended that, proposed defendant no. 2 to 7 may be added to decide the real controversy between the parties. The plaintiff also wants to insert para no. 4A, 6A and prayer 10A by way of amendment. He contended that, the proposed defendant no. 6 & 7 have no concerned with the subject matter of the suit. Defendant no. 2 to 5 are legal heirs of Champabai Kudle. They have also no right to perform *Puja* of Mhaskoba temple. Plaintiff lastly prayed that, the amendment may be allowed to decide the real controversy between the parties.

3] The defendant strongly opposed the application by filing say at Exh. 32. They denied the application in to-to. The application is vague one. The plaintiff did not mention how the proposed defendants having right to perform *Puja* of Veer Mhaskoba temple. The plaintiff is denying right to proposed defendant no. 6 & 7 on one hand and praying to add them as defendants on other hand. The plaintiff also did not mention how proposed defendant no. 2 to 5 are legal heirs of Champabai Kudale. The amendment sought would change the nature of suit. The plaintiff has no right to file such application. The plaintiff has filed the application to prolong the matter. He lastly prayed to reject the application.

4] Perused record. Heard both sides. The suit for declaration and perpetual injunction is pending. The subject matter of the suit is right to perform *Puja* of Shrinath Mhaskoba temple and to take offerings for particular turn. The defendant filed written statement at Exh. 17. Issues have been framed at Exh. 25. The hearing of suit is began. The written statement of defendant shows that, the defendant specifically pleaded how the other persons than him are also allotted the turn to take offerings as per consultation with trustees.

5] The plaintiff is claiming that, the proposed defendants are co-priest having right to perform *Puja* and take offerings. The plaintiff also seeking additional declaration that, the proposed defendant no. 2 to 7 are having no right, title or interest in the 2 Aana share of deceased Shantabai Kudale in offerings of Mhaskoba temple.

6] As per Order VI Rule 17 of CPC, the court may at any stage of suit allow either party to alter or amend their pleading. The proviso appended to said Rule states that the amendment application shall not be allowed once the trial has been commenced unless the party with due diligence could not raise said fact earlier. Though the hearing of suit is commenced after framing issues, no evidence is laid by either parties. The hearing in literal sense is not yet commenced.

7] The real dispute between the parties is in respect of right to perform *Puja* of Shrinath Mhaskoba temple and take offerings. The amendment sought is in respect of same subject matter. The presence of proposed defendants would enable the court to effectually and completely adjudicate upon the real controversy between the parties. The amendment sought would not change the nature of suit. Therefore, in

order to completely adjudicate the dispute between the parties once for all, the application may be allowed. The defendant may be compensated with proportionate cost for delay in making the application. Considering above discussion & in the interest of justice, I pass the following order.

ORDER

- i- Application Exh. 29 is allowed subject to costs of Rs. 2,000/-.
- ii- Plaintiff shall carry out amendment and supply copies of amended plaint on or before next date.

Place:Saswad
Date :09/01/2018

(V. K. Jadhav)
Civil Judge Junior Division, Saswad

CERTIFICATE

I affirm that the contents of this P.D.F. File order are same word for word as per original order.

Name of Steno	- G.S. Chougule
Court Name	- V.K. Jadhav, JMFC, Saswad.
Date	- 09/01/2018
Order signed by	
P.O. on	- 09/01/2018
Order uploaded	
on	- 16/01/2018