

Spl.C.S.No. 707/2011
Mrs. Shilpa Palkar Vs. Mr.Sanjay
Giri.
CNR NO. MHRG04-000933-2011.

ORDER BELOW APPLICATION AT EXH. 45

This application is filed by plaintiffs to amend the
plaint under Order 6 Rule 17 of C.P.C.

2. In a nutshell, the case of plaintiffs is that, the suit
is filed for declaration and possession. However, at the time of filing
the suit, defendant Nos. 05 and 06 were minor. Therefore, on their
behalf, her mother i.e. Smt. Usha Sanjay Giri was appointed as a
guardian on their behalf. Despite due service of summons they did
not appear in the suit. Therefore, no W.S. order came to be passed
against them. However, the court has passed order below
application at Exh 1 on 15/10/2022, and called upon to take
appropriate steps against the defendant Nos. 5 and 6. Now, said
both the defendants became major. Therefore, necessary correction
are required to be made in the column of age, occupation and to
delete the name of their guardian in the column of plaintiff. Hence,
the application.

3. The Ld. Counsel of the defendants has strongly
objected the application by filing say at Exh. 48 and contended that,
the plaintiff was well aware about the fact that the defendants were
minor at the filing of the suit. However, after passing order by the

Court below Exh. 01, the plaintiffs have not taken any step to rectify or amend the plaint. Therefore, it is prayed to impose heavy costs while granting the amendment to that effect.

4. Perused the record. Heard both the sides. On perusal of the plaint, it appears that, at the time of filing the suit, defendant Nos. 5 and 6 were minor and their mother was guardian of them. It is the contention of the plaintiffs that, now the said defendants became major. No doubt, it is the duty of the counsel of the plaintiff to take appropriate steps regarding minor defendants. No adverse order can be passed against the minor defendants. Any guardian remained absent in the case or failed to appear on behalf of minor defendants, in that event court officer is required to be appointed for the benefit of the minor. Therefore, I passed necessary order below Exh. 1 on 15/10/2022, directing the plaintiffs to take appropriate steps regarding minor defendant Nos. 5 and 6. Considering the ages of the minor defendant Nos. 5 and 6 at the time of filing of the suit, it appears that, at present they became major.

5. The plaintiffs want to amend the ages of the defendant Nos. 5 and 6 and also want to add their occupation. By way of this amendment, defendant Nos. 5 and 6 will be treated as separate defendants. The proposed amendment is helpful to resolve the real controversy between the parties. No prejudice will be caused to the defendants if the proposed amendment is allowed. No

nature of the suit will be changed due to proposed amendment. Considering the provisions under Order 6 rule 17 of C.P.C., I have no hesitation to allow the application imposing costs. In the result, I proceed to pass the following order.

ORDER

1] The application at **Exh. 45** is hereby allowed subject to to the costs of 3000/-. Cost be paid to Legal Services Authority, Raigad-Alibag.

2] Order in open Court.

Panvel.
Dt. 24-01-2023

(A.R. Gunnal)
Civil Judge, Sr. Dn., Panvel.