

ORDER BELOW EXH.39 IN REGULAR CIVIL SUIT NO. 28/2013.

1. This is an application filed under Order 6 Rule 17 of the Code of Civil Procedure by the plaintiffs to amend the pleadings and addition of parties under Order 1 Rule 10 of Code of Civil Procedure.

2. It is contended on behalf of plaintiffs that Shri.Rama Mahadu Jambhale initially has signed the plaint as a plaintiff No.2 but on 04/03/2013 he withdrawn himself from the array of plaintiffs. He is co-sharer of the suit property. Therefore, in order to avoid the technical defect he needs to be joint as a defendant. Plaintiff has added Pandurang Mahadu Jambhale and Awdabai Mahadu Jambhale as a plaintiffs but both are dead prior to filing suit. Both have left the wife of Pandurang Mahadu Jambhale namely Nirmala as their sole legal representative. Therefore, the names of plaintiff No.3 and 8 needs to be deleted and in their place Nirmala Pandurang Jambhale needs to be joint as a plaintiff. So also the name of defendant No.4 is inadvertently written as Kondu instead of Dhondu. That also needs to be corrected. Hence, this application.

3. The application is resisted by the defendants vide their say Exh.41. According to the defendants the plaintiffs have not mentioned on what date Shri.Panduran Mahadu Jambhale is died. No evidence is filed to show that Nirmala is wife of Pandurang and she is sole legal representative. The Nirmala Pandurang Jambhale even if is a wife of Pandurang Jambhale she should file separate application to that effect. She cannot be added on the basis of application of plaintiffs. The

amendment sought by the plaintiffs is time barred and it change the nature of the suit. Hence, prayed for rejecting this application.

4. Heard Advocate Shri.S.G.Phadake for the plaintiffs and Advocate Shri.S.P.Patnakar for the defendants at length.

5. In view of rival submissions and taking into consideration Order 6 Rule 17 of Code of Civil Procedure, following points arise for my determination and I have recorded my findings with reasons thereto as follows :

	<u>POINTS</u>		<u>FINDINGS</u>
1	Whether proposed amendment is necessary to resolve the real controversy of dispute in between parties ?		In the affirmative.
2	Whether proposed amendment will cause prejudice to the rights of the defendants ?		In the Negative.
3	What order ?		Application is allowed.

REASON

As to point No.1 and 2 :-

6. It is an admitted fact that the plaintiff Pandurang Mahadu Jambhale and Awadabai Mahdu Jambhale are dead prior to filing the suit. At the same time it appears that plaintiffs have added them as plaintiff No.3 and 8 though they are dead. Inadvertently the suit plaint seems to

be admitted even though both are dead on the date of filing suit. Nirmala Pandurang Jambhale appears to be wife of deceased Pandurang, plaintiff No.3. Her status is not in dispute. Now plaintiffs have filed the suit for declaration of ownership and possession and injunction against the defendants. Though, plaintiff Nos.3 and 8 are dead, right to sue survives for their legal representative that is Nirmala Jambhale. There appears substance in the contention of defendants that Nirmala Jambhale should give separate application for adding her as a interested party and the plaintiffs have no right to seek her addition as a plaintiff. So far as this submission is concerned the proposed plaintiff Nirmala Jambhale has already filed separate application under Order 1 Rule 10 at Exh.44 after filing this application. There from it is crystal clear that she intends to be party to the suit for protection of her legal rights against the defendants. Therefore, even though plaintiffs have no right to propose her addition, it will not vitiate plaintiffs application taking into consideration the separate application Exh.44 filed by Nirmala Pandurang Jambhale.

7. Plaintiffs are seeking correction of name of defendant No.4. The mistake appears technical and typographical. Plaintiffs intends to add the property of survey No.5/4a/2 which is part and parcel of Gut No.18. The same being part and parcel of the subject matter, it necessary to add the property of Survey No.5/4a/2 for the final adjudication of the dispute. It will not cause any prejudice to the rights of defendants. The mistake seems to be due to land consolidation extract and not due to negligence of party.

8. The Ld. counsel for defendants resisted the application on the ground of delay in seeking amendment. However, delay cannot

curtail the statutory rights of the parties. So far as addition of plaintiff Nirmala Pandurang Jambhale is concerned, her right to sue against defendant survives and therefore, she is entitled to be added as a co-plaintiff in the suit by deleting the names of deceased defendant No.3 and 8. The proposed amendment appears extremely necessary for final adjudication of the matter.

9. In the case of **Ma Shwe Mya V/s. Maung Mo Hnaung reported in AIR 1922 P.C.249.** The Hon'ble Privy Counsel has observed that, **“All rules of Courts are nothing but provisions intended to secure the proper administration of justice and it is, therefore, essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but none the less no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change by means of amendment, the subject matter of the suit.”**

10. Taking into consideration the observations made by the Hon'ble Privy counsel it is crystal clear that rules are made for procedural aspect to deal with the situation while administering justice. It cannot be blanketly and technically applied ipso facto to each and every circumstance. What is to be seen ultimately is to see the administration of justice and final adjudication of real controversy of dispute in between parties. In the case in hand, the proposed amendment appears necessary, bonafide and for final adjudication of real controversy in between parties. The nature of suit will not be changed by proposed technical amendment.

It will not cause any prejudice to the defence of the defendants. Hence, I answer the point No.1 in the affirmative and 2 in the Negative.

As to Point No.3 :

11. There appears technical flaw in the plaint filed by the plaintiffs. However, the right to sue survives against the defendants. For the sake of mistakes of advocate, parties should not suffer. At the most the latches can be cured by way of saddling costs upon the plaintiffs. Hence, I pass the following order :

ORDER

1. Application is allowed subject to cost of Rs.500/- to be paid to the contesting defendants within 7 days from today.
2. The plaintiffs to carryout necessary amendment within 7 days after payment of cost.
3. Defendants are at liberty to file additional written statement relating to the amendment carried out by the plaintiffs if necessary.
4. Dictated and pronounced in open Court.

Khalapur.
Date : 08/09/2015

(M.P.Saraf)
Civil Judge, J.D. Khalapur.