

ORDER BELOW EXH. NO. 65

1. Plaintiff has filed present application for amendment. It is the contention of plaintiff that he filed suit for partition. It was necessary for him to include all the sharer, but he could not get necessary information and proposed sharer are sisters of plaintiff. Hence they are necessary party to the present suit. Proposed defendant no. 5 died on 07.03.1984, Subabai died on 05.08.1993 and Shembai died on 02.06.2016. Nature of suit would not be changed and to decide the suit proposed amendment is necessary. Lastly prayed to allow the application.

2. Defendant resisted the application on the ground that application is not tenable. The bar of Order II Rule 2 of Civil Procedure Code is applicable to the present application. Plaintiff has not filed death certificate and all proposed defendants died prior to institution of the suit. Nature of the suit would be changed. Plaintiff has not shown due diligence and no real controversy shall be decided by the amendment. Defendant has taken defence about non-joinder of necessary party and plaintiff in his cross examination admitted about it and Court also framed issues about it. Lastly prayed to reject the application.

3. Heard both the parties. It is seen from the record that suit is for partition, it is filed on 18.01.2011, defendant raised objection in his written statement about want of necessary party on 15.07.2011, some cross examination of plaintiff was recorded on 28.09.2017 and additional issues in regard to it is framed on 01.11.2017 and remaining cross examination of

plaintiff were adjourned by defendant and on 09.01.2018 present application is filed by the plaintiff. It is admitted that defendant had taken defence about necessary party in the year 2011 but issue in regard to it is framed after some cross examination of plaintiff. It is admitted that plaintiff should not wait for framing of issues in regard to necessary party and after commencement of trial it is necessary to show due diligence for not applying for amendment but on perusal of the contents mentioned in the application it is seen that said application is for addition of parties and definitely all sharer are necessary party in the suit for partition in whose absence effective decree can not be passed. Under such circumstances I come to conclusion that proposed amendment is necessary to decide the suit on merits, to decide real controversy between both parties and amendment is formal one. Hence application needs to be allowed but subject to costs. With this I pass following order.

Order

1. The application is allowed subject to costs of Rs. 4,000/-. Out of which amount of Rs. 1500/- be paid to legal aid.
2. The plaintiff is directed to amend the suit within stipulated period and file amended plaint.

Date: 01.12.2018

(Sou. J.R. Raut)
2nd Jt. Civil Judge Junior Divison,
Barshi, Dist. Solapur.

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RCS No. 32/2011
Babu Vs. Dagdu & Anr.

CERTIFICATE

I affirm that the contents of this PDF file Judgment is same word to word as per the original Judgment.

- (a) Name of the Stenographer :- S. V. Kokate
- (b) Court :- JMFC Court, Barshi
- (c) Judgment signed by P.O.on:- 01.12.2018
- (d) Judgment uploaded on :- 07.12.2018