

ORDER BELOW EXH. 30

(Dated 8th day of April, 2022)

1. The plaintiff has moved this application under Order 1 Rule 10 of Code of Civil Procedure.
2. Read the application and the say. Heard Learned Adv. Tople, Counsel for the plaintiff and learned Adv. Dharskar, Counsel for the defendant.
3. Learned counsel for plaintiff submitted that plaintiff has instituted this suit for permanent injunction. The defendant has come with the case that on 08.10.2012 one 'Sammati Lekh' has been executed between the defendant on one side and Gajanan and Ranjanabai Dhobale on another side. They have 33 % share each over the well and the electric connection situated over the Field Survey No. 499 owned by the defendant. The defendant has suppressed the above document and played fraud upon the plaintiff. Therefore, the plaintiff wish to add said Gajanan and Ranjanabai as party in the suit. They are necessary parties to the suit. Their presence is necessary in order to enable the court to effectively and completely adjudicate upon and settle all the questions involved in suit.
4. Per contra, the learned counsel for the defendant submitted burden is upon the plaintiff to prove that the proposed defendants are necessary parties. The plaintiff has raised this issue

in their written statement. The plaintiff was aware about it. The application is after thought. The plaintiff has not made them party earlier. By this application, at this stage, the plaintiff wants to fill up the lacuna in the suit. Therefore the application is not tenable and is liable to be rejected.

5. From the rival contentions of the parties, the following point arise for determination, to which I have recorded my findings for the reason stated below:

Sr.No.	<u>Points</u>	<u>Findings</u>
1.	Whether proposed defendants are necessary party to the suit?	..Yes
2.	What order ?	Application is allowed

REASONS

As to Point No. (1):

6. On perusal of plaint, it appears that the plaintiff has filed suit for permanent injunction restraining the defendant from obstructing the plaintiff from irrigating the field survey no. 515 from the well and motorpump situated in field survey No. 499. The defendant has taken defence in written statement that the Vithoba Dhabale was having two sons: Suresh Dhabale and Gajanan Dhabale. Vithoba has partitioned the property and Field survey no.

499 and 515 given to the share of Suresh. Ranjana w/o Gajanan Dhabale are given Field Survey No. 486 and 487. Suresh, Gajanan and Ranjana have 0.33% share in the disputed Well. The defendant has purchased field survey No. 499 from Suresh. Thereafter, said Ranjana and Gajanan filed RCS No. 17/2011 against the defendant and Suresh. They have settled the matter before the mediator and it was decided that the defendant, Ranjana and Gajanan have 0.33% share in the suit well and motorpump. Though the plaintiff has not claimed any relief against the proposed defendant. However, the plaintiff has also filed application for amendment of the plaint in view of the above mentioned facts and addition of proposed defendants in the suit. In the event of passing decree, the rights of the plaintiff, defendants and the rights of the proposed defendant would be affected. Further the presence of the proposed defendant in this suit is necessary to effectually and completely adjudicate upon and to settle all the questions involved in the suit.

7. In view of the above discussion, Hence I answer point no (1) in the affirmative.

As to Point No. 2:

8. As stated above the plaintiff is entitled to add proposed defendants. Therefore, this application is entitled to be allowed. Hence, I proceed to pass the following order:

ORDER

1. The application Exh. 30 is allowed.
2. The plaintiff is directed to add the proposed defendants and file amended plaint.
3. Issue suit summons to the proposed defendants to appears and to file their written statement within 30 days of service of summons for settlement of issues.

sd/-

(Manjusha M. Alone)
Civil Judge Junior Division
Karanja (Gh.)

Dt. 08.04.2022