

MHYA200000402024



ORDER
(Below Exh.14)
(Date : 27th January, 2025)

This an application filed by the applicant to add her as a defendant No.2.

2. The application is opposed by the plaintiff by filing his say on the application itself.

3. Perused the applications and say filed on it.

4. Heard both the parties.

5. The applicant submitted that the the suit property is her ancestral property. Therefore, she has share in the suit property. However, the plaintiff did not make her party to the suit. Hence, prayed to allow the application.

6. On the contrary, the plaintiff strongly opposed the application and submitted that already oral partition was done on 25.11.1993. The applicant did not raise any objection to the said partition. The plaintiff has filed suit in order to get his share in the suit property. The applicant has no any share in the suit property. Hence, prayed to reject the application.

7. Order 1 Rule 10 of the Code of Civil Procedure, 1908 provides that, “(1) Where a suit has been instituted in the name of the

wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) The Court may at any stage of the proceedings, either upon or without any application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

(5) Subject to the provisions of the [Indian Limitation Act, 1877 (15 of 1877), Section 22], the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons”.

8. The above said provision enables the Court to add any person as a party at any stage of the proceedings if the person whose presence before the Court is necessary in order to enable the Court to effectively and completely adjudicate upon and settle of the questions invlved in the suit. Similarly, avoidance of multiplicity of proceeding is also one of the object of the said provision.

9. Perused the record. This is suit for partition and separate possession. As the applicant alleged that the suit property is her ancestral properties and she has right in the suit property. Therefore, the applicant appears to be necessary party to the suit. Thus, I pass following order.

ORDER

1. The application is allowed.
2. The plaintiff to add the applicant as defendant No.2 in the plaint.
3. The plaintiff to carry out necessary amendment within stipulated period.

Maregaon.
Date: 27.01.2025.

(K. P. Dawane)
Civil Judge (Jr. Dn.), Maregaon.