

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Civil Application No. 00799 of 2019
(In Civil Application No. 11560 of 2018)
(In Second Appeal Stamp No. 11219 of 2017)

District : Jalna

Vimalbai w/o. Radhakisan Davane. .. Applicant.

versus

Abdul Aji s/o. Abdul Rashid
& 05 others. .. Non-applicants.

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Mr. P.P. More, Advocate, for the applicant.

*Mr. Ravindra M. Deshmukh, Advocate, for
non-applicants no.01 to 04.*

*Mr. S.D. Hiwrekar, Advocate, for non-applicant
no.05.*

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 15TH JANUARY 2019

ORAL ORDER :

01. Present application has been filed by the added respondent no.03 for recalling of order dated 18-09-2018.

02. Non-applicants no.01 to 04 along with others have filed the second appeal challenging the impugned judgment and order dated 18-01-2017 in Regular Civil Appeal No. 84 of 2014, passed by learned District

Judge-2, Jalna. An application was made by them vide Civil Application No. 11560 of 2018 to add the present applicant as party. The said application came to be allowed and she has been made as a party. She submits that she was not party before the learned trial court nor even before learned first appellate court. It is stated that, only on the basis of statement of the parties, she has been added as party - respondent only with an intention to resolve the matter by way of mediation. However, mediation has failed. Under such circumstance, she is not a necessary party and, therefore, prayer has been made to recall the order.

03. In view of the fact that the mediation has now failed, the non-applicants to this application have no objection to recall the said order.

04. It is further to be noted that in view of peculiar circumstance that there was possibility of settlement through mediation, when it was suggested by the mediator that she is necessary party, that contention was taken and the civil application was filed. Taking into consideration that possibility, the said order appears to have been passed. However, the fact cannot be ignored that the present applicant was not a party before trial Court as well as first appellate Court. Further, from the impugned judgment, it can also be seen that nobody had taken a

specific contention that she is a necessary party. Under such circumstance, there is no hurdle to delete her as party - respondent.

05. Hence, the civil application is allowed. Relief is granted in terms of prayer clause "B".

(Smt. Vibha Kankanwadi)
JUDGE

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