

**Order below Exh.46 in Spl.C.S. No.24/2018**

(C.N.R. No. MHAH05-000684-2018)

This is an application under Order VI Rule 17 of the Code of Civil Procedure filed by the plaintiffs.

2. By this application, the plaintiffs are contending that, in the present matter, they have filed an application at Exh.5, for seeking relief of interim injunction. During the hearing of that application, for the first time, the defendant No.2 raised dispute in respect of existence of sale-deed dated 18.02.1947. They have further contended that, prior to this, when the matter was referred to Hon'ble High Court and from their to Collector, Ahmednagar, no such dispute about the existence of sale-deed dated 18.02.1947 was raised by the defendant No.2, despite having knowledge of the same. However, in view of their prayer of mesne profits, this sheer defence has been taken. As per their further contention, the sale-deed dated 15.03.1948 was only acted upon and the sale-deed dated 18.02.1947 was never acted upon. Accordingly, it has become essential for them to seek a declaration in respect of that sale-deed dated 18.02.1947. Accordingly, by contending that, the proposed amendment is necessitated due to the first time defence raised by the defendant No.2, they have prayed for allowing the application.

3. The defendant No.1 by filing say on the overleaf of the application, resisted the same. As per his contention, the

proposed amendment would change the nature of suit and accordingly, he has prayed for rejection of the application.

4. The defendant No.2 by filing say at Exh.48, resisted the application. He has also contended that, the proposed amendment would change the suit and prayed for rejection of the application.

5. Heard both sides. Perused record. Perusal of record shows that, the issues are settled in this matter and the matter is pending for trial. It is also pertinent to note that, yet the parties have not adduced their evidence. Apart from this, it is also significant to note that, the plaintiffs have sought relief of declaration and other ancillary reliefs. It is also significant to note that, the defendant No.2 has raised some dispute by contending existing of sale-deed dated 18.02.1947 in his written statement. In such circumstances and in order to have the complete adjudication of the matter by deciding all relevant issues and disputes between the parties, in this lis only, it would be just and proper to allow the plaintiffs to carry out the proposed amendment. More so, though the defendants have tried to contend that, the proposed amendment would change the nature of suit, except bare and vague contention, they have not clarified as to how the nature of suit would be changed. Rather, as stated above, the proposed amendment appears to be essential in order to have the complete adjudication of the matter. Hence, following

order.

ORDER

1. Application is allowed subject to cost of Rs.500/- (Five Hundred only).
2. The plaintiffs to carry out the proposed amendment within stipulated period of 14 days by complying with cost condition and file the amended copy of the plaint forthwith, without seeking further extension of time.

Date. 16/12/2020.

(D.P. Kasat)
Civil Judge, Senior Division
Shrirampur.