

**Order below Exh.69 in Spl. Civil Suit No.24/2018**

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

This is an application for amendment of plaint under Order 6, Rule 17 of the Civil Procedure Code.

2. By this application, the plaintiffs are contending that, at the time of hearing of application at Exh.5 for interim relief, the defendant No.2 raised a dispute in respect of existence of sale-deed dated 18.02.1947. Prior to that, at no point of time, such a dispute regarding sale-deed dated 18.02.1947 was raised by the defendant No.2, despite his knowledge about the same. However, the defendant No.2 has raised such a defence only with an intention to escape from his liability of paying mesne profits to them. It is their further contention that, the sale-deed dated 15.03.1948 is valid and acted upon and accordingly, the sale-deed dated 18.02.1947 becomes nonest. In fact, the sale-deed dated 18.02.1947 was never acted upon and therefore, the purchaser of the same has never claimed title on the basis of that sale-deed. However, only with an intention to distract the entire proceeding, such a defence is raised by defendant No.2. Accordingly, it has become essential for them to amend their plaint for seeking relief in respect of sale-deed dated 18.02.1947. As they are intending to amend their prayer, the purchaser of the sale-deed dated 18.02.1947, becomes a necessary party to this suit. Accordingly, in order to elucidate the matter in dispute, it is essential to implead

the purchaser of the said sale-deed as defendant No.3. Accordingly by contending that, if the amendment sought in this application would not be permitted, it would create unnecessary hardship to the concerned necessary parties and that even it would be helpful for the just and complete adjudication of the matter, they have prayed for allowing the application.

3. The defendant No.2 by filing its say at Exh.71, resisted the application. The defendant No.1 adopted the say of defendant No.2. As per their contention, the application is not *bonafide* nor comes within the purview of the provisions of Order 6, Rule 17 of the Code of Civil Procedure. As per their further contention, the proposed amendment would change the nature of suit. They have further contended that, in the original suit, there is no mention about the alleged sale-deed in question. Accordingly by contending that, the proposed amendment would put-forth a new case and would change nature of suit, they have prayed for rejection of the application.

4. Heard both sides. Perused record. Perusal of the record shows that, the plaintiffs have sought relief of declaration along with other reliefs by contending that, on 15.03.1948, the original owner sold only half of the land to the owner of Maharashtra Sugar Mills i.e. Shantaram Dahanukar and remaining half land continued to be leasehold property. On

the contrary, the defendant No.2 has raised a specific defence that, the predecessor of plaintiffs had sold entire suit property by virtue of two distinct sale-deeds dated 18.02.1947 and 15.03.1948. Even, it appears that, the copies of both these sale-deeds are placed on record.

5. Now, the plaintiffs are intending to contend that, the document of sale-deed dated 18.02.1947 is never acted upon. It is needless to mention here that, in the original pleading of the parties, a specific reference to the document dated 18.02.1947 has come on record. In such circumstances, even if, by allowing the proposed amendment, the plaintiffs would be permitted to seek relief in respect of document dated 18.02.1947, there appears no prejudice to the defendants. It is also significant to note that, apart from the proposed amendment, the plaintiffs are intending to add the purchaser of the document dated 18.02.1947, which would definitely help to adjudicate the entire dispute between the parties, in the presence of all the necessary parties.

6. As such, it appears that, the proposed amendment would facilitate the complete and final adjudication of the entire dispute between the parties. No doubt, some inconvenience would be caused to the present defendants, however, it can very well be compensated in terms of costs. Therefore, the application deserves to be allowed. Hence, following order.

ORDER

1. Application is allowed subject to costs of Rs.1000/- to be distributed equally amongst defendant Nos.1 & 2.
2. The plaintiffs to carry out the proposed amendment within stipulated period and file amended copy of plaint forthwith.
3. After the addition of the proposed defendant No.3 in this suit, the suit summons be issued to him immediately.

Date : 26.07.2022

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

CERTIFICATE

I affirm that, the contents of this PDF file order are same word to word, as per the original.

Name of the Court : Civil Court, Senior Division,
Shrirampur, Dist.Ahmednagar.

Name of Stenographer : Ajinath A. Padalkar.

Date of Order : 26.07.2022.