

MHAH190005832022



ORDER BELOW EXH.18 (IN RCS NO.131/2022)

This is an application filed by the plaintiff under order VI rule 17 of Code of Civil Procedure. In brief, the plaintiff submits that the defendant no. 1 has sold out suit property 0 H 50 R out of Gat no.774/2 in favour of proposed defendant no.3 Abdulbari Abdulkhalik Shaikh on 14.09.2022. Plaintiff wants to add Abdulbari Abdulkhalik Shaikh as defendants No.3. Hence, amendment has been sought to add defendant and prayed for the amendment in the plaint.

2) The application is opposed by the defendants by filing say on backleaf of the said application. Further he contended that , Plaintiff has not filed this application within time hence, he prayed for rejection of present application.

3) Having considered the submission of the parties, the following point arises for determination and finding is thereon with reason.

<u>POINTS</u>	<u>REASONS</u>
1- Is the proposed amendment necessary to adjudicate real controversy between the party?	Yes
2- What order?	As per final order.

4) **As to point no. 1:**

Heard the learned advocates for the parties. The learned Advocate for the plaintiff argued that the proposed amendment is necessary to be incorporated in the plaint for proper adjudication of controversy. On the other hand, the learned counsel for the defendants submitted that present application is not legal hence be rejected.

5) Perused the application, say and the photocopy sale-deed regarding alleged transaction. From photocopy sale-deed bearing no.4113/2022, it seems that the defendant no. 1 has sold out suit property in favour of Sabdulbari Abdulkhalik Shaikh . On perusal of record, it appears that, present suit was presented on 11.04.2022 for perpetual injunction. This amply make it clear that the aforesaid transaction took place after institution of suit. The above said land is the subject matter of suit. The proposed amendment is certainly needs to be incorporated in the plaint for proper adjudication of the dispute involved in the instant case.

6) Plaintiff wants to add proposed defendant as party to suit. Order I Rule 3 of Civil Procedure Code lays down that,-

All persons may be joined in one suit as defendants where,

a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons whether jointly, severally or in the alternative,

b) if separate suits were brought against such persons, any

common question of law or fact would arise.

In the present suit, proposed defendant is subsequent purchaser of suit property therefore, right to relief is existed against proposed defendant, therefore, it is necessary to add proposed defendant as party to suit and amend plaint accordingly.

7) In view of this observation, the point no. 1 is answered in affirmative and following order is passed.

ORDER

- 1) The application is allowed.
- 2) The plaintiff to carry out the proposed amendment within 14 days from the date of this order.
- 3) The plaintiff to place amended copy of plaint on record and supply it to the defendants.
- 4) Cost in main cause .

Place: Shevgaon

Date: 14.07.2023

(Monali A. Bendre)
2nd Jt. Civil Judge Jr. Division,
Shevgoan