

Bapu Baba Mane

..... Plaintiff

Versus

1. Santosh Manik Bhondave

..... Defendants

ORDER BELOW EXHIBIT 72

1. The suit is for perpetual injunction. The plaintiff has filed the application for amendment of plaint as per the provisions of Order 6 rule 17 of Code of Civil Procedure vide exhibit 72. The plaintiff has stated that, suit property described in paragraph number 3 of suit is purchased from plaintiff on 08-11-2021. The sale deed bears number S.G.D.5882/2021. The plaintiff has become owner of suit property described in paragraph number 3 of suit. But, at the time of institution of this suit, sale deed was not executed. Now, sale deed is executed. Hence, it is necessary to amend the suit. The plaintiff wants to add following contents after paragraph number 6 of suit. The defendant number 17 to 20 have executed sale deed bearing number SGD/5882/2021 on 08-11-2021 at the office of sub-registrar Shrigonda in respect of suit property described in paragraph number 3 of suit. Accordingly, mutation entry bearing number 8441 is made in record of rights of suit property. The plaintiff has advanced loan on suit property described in paragraph number 3 of suit.

2. The defendants have filed say on the application vide exhibit 72 and raised strong objection. The defendants have submitted that,

application is false and vexatious. Hence, it is to be rejected. The proposed amendment in the suit is not within period of limitation.

3. Upon hearing of both sides and on perusal of exhibit 72 and say of defendants, the following points arise for my consideration –

| Sr. No. | Points | Findings |
|----------------|--|-----------------------------|
| 1. | Whether proposed amendment will change nature of suit ? | No |
| 2. | Whether proposed amendment is necessary to decide real dispute between parties ? | Yes |
| 3. | Is plaintiff entitled for relief of amendment ? | Yes |
| 4. | What is Order ? | The application is allowed. |

REASONS

As to point number 1 to 4 –

4. The point number 1 to 4 are interlinked with each other. I have clubbed point number 1 to 4 together and discussed accordingly. The suit is for perpetual injunction. The plaintiff has filed the application at exhibit 72 for amendment of plaint as per the provision of Order 6 Rule 17 of Code of Civil Procedure.

5. On perusal of exhibit 72, it reveals that, the plaintiff is seeking the amendment in the suit. The plaintiff has stated that, the defendant number 17 to 20 have executed sale deed bearing number SGD/5882/2021 on 08-11-2021 at the office of sub-registrar Shrigonda in respect of suit property described in paragraph number

3 of suit after institution of this suit. Therefore, it is necessary to amend the suit. At this juncture, recourse must be taken to order 6 Rule 17 of Code of Civil Procedure. The gist of Order 6 Rule 17 of Code of Civil Procedure says that amendment must be necessary for the purpose of determining real questions in controversy between the parties. The amendment in the pleading must be in just terms.

6. On perusal of exhibit 72, it reveals that, plaintiff is seeking amendment in paragraph 6 of suit. The suit property is described in paragraph 3 of suit. The sale deed of that property is executed after institution of this suit. At this juncture, recourse must be taken to order 6 Rule 17 of Code of Civil Procedure. The gist of Order 6 Rule 17 of Code of Civil Procedure says that amendment must be necessary for the purpose of determining real questions in controversy between the parties. The amendment in the pleading must be in just terms.

7. The plaintiff has stated that, suit property described in paragraph number 3 of suit is purchased from plaintiff on 08-11-2021. The sale deed bears number S.G.D.5882/2021. The plaintiff has become owner of suit property described in paragraph number 3 of suit. The sale deed dated 08-11-2021 is executed by defendant number 17 to 20 in favour of plaintiff after institution of this suit. Hence, it is necessary to write about this sale deed in suit. The sale deed dated 08-11-2021 is in respect of suit property. Hence, amendment is necessary, if it is not done so then it may result in injustice to plaintiff in future. Hence, application vide exhibit 72 may

be allowed. The defendants will get opportunity to put forth their defence in future.

8. The plaintiff is seeking amendment in the paragraph 6 of suit. In view of court, the nature of proposed amendment is not causing any change in the nature of claim of suit. It will not damage or change the nature of suit, rather the amendment will sort out the dispute between parties. It seems that the proposed amendment is bona fide one. The proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties. If the application vide exhibit 23 is rejected then it may result in multiplicity of litigation. In order to avoid multiplicity of proceeding, it will be appropriate to allow the said application. The proposed amendment will help the court to adjudicate the dispute on its merit. The defendants will get the opportunity to put forth their defence.

9. In the view of the court, if proposed amendment is allowed, it will not cause prejudice to defendants. The proposed amendment will not affect rights of defendants. The defendants will get the opportunity to put forth their defence if amendment application is allowed. And the hearing of suit is not yet begin. Therefore, plaintiff can very well amend the suit at this stage. Hence, application vide exhibit 23 is very well maintainable. The terms of amendment are just. Therefore, after considering the provision of Order 6 Rule 17 of Code of Civil Procedure and in view of above facts & circumstances, the application is very well maintainable. It is just & proper to allow application in the interest of justice. In the result the following order is passed.

ORDER

1. The application vide exhibit 72 is allowed.
2. The Plaintiff shall carry out amendment on or before the next date.
3. The plaintiff must file the copy of amended plaint on or before next date and trial of the suit is to proceed further in accordance with provisions of law.
4. There is no order as to cost.

Shrigonda
Date – 29-02-2024

Sd/-
Smt. K. A. Katkar
Joint Civil Judge(J.D)
Shrigonda.

:-CERTIFICATE:-

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

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|-------------------------|----|---|
| Case No. | :- | R.C.S. No. 345/2021 |
| Name of Stenographer | :- | Smt. S. V. Jadhav |
| Court Name | :- | Smt. K.A.Katkar, Jt. Civil Judge, J.D.& J.M.F.C, Shrigonda. |
| Date of Decision | :- | 29-02-2024 |
| Order signed by P.O. on | :- | 29-02-2024 |
| Order uploaded on | :- | 29-02-2024 |