

**Order below Exh. 48 in R.C.S. No. 33/2013**

1. This is an application by plaintiffs, seeking permission to amend the plaint. It is the contention of plaintiffs that they have sought relief of partition and possession of their separate share in the suit properties. During pendency of the suit, defendant No. 1 to 6 illegally sold out the part of the suit properties. Plaintiffs have mentioned the proposed amendment in para 3 to 15 of the application. Sale deeds dated 8/5/2014 is referred in proposed amendment, mentioned in para 3,4, and 5 of the application. Sale deed dated 6/9/2014 is referred in para 6 and sale deed dated 19/9/2014 is referred in para 7 of the application. Rest of the paras of the application would show that plaintiffs have sought an amendment in the plaint in respect of addition of reference of parties, changed area of the suit properties and addition of relief of declaration. Plaintiffs are praying for grant of application.

2. Called say of other sides. Ld. Counsel for defendant No. 10 to 13 filed his say and thereby resisting the application. It is contended that concerned property purchased by defendant no. 10 to 13 by registered sale deed. Plaintiffs do not have any concern with the same. If, plaintiffs are allow to amend the plaint then it would change nature of the proceeding. He is praying for rejection of application.

3. Ld. Counsel for defendant No. 1 to 4 is also resisting

the application. It is contended that the proposed amendment application would change nature of the suit. It is objection of defendants No. 1 to 4 that the ground is not cited by plaintiffs for seeking an amendment. No reason is mentioned thereof. The applications moved to fill up the lacuna. The application is moved deliberately to fill up the lacuna in the suit. The amendment is not necessary for deciding the matter on merits. He is praying for rejection of application.

4. Ld. Counsel for defendant No. 14 to 18 appeared and adopted say of other defendants.

5. Heard both sides. I have gone through the pleading of the parties and documents on record. It is seen that the quantum of amendment in the proposed amendment in the plaint is much more. Although, the nature of suggested amendment in the plaint is more, those are in particular form, like seeking additional relief of declaration in respect of sale deeds, subsequently executed after filing of the suit. The proposed amendment in respect of area of land is also connected thereto. There are some proposed amendments in respect of area and measurement of the suit properties. Thus, although, it appears that there are too much amendments, sought by the plaintiffs. Most of them are in existence to the subsequent event. Thus, the entire application of the plaintiffs is based on subsequent event. Therefore, the said fact is necessary for considering while deciding the application.

Most of the sale deeds are brought on record by filing certified copy thereof. It is also not the plea of defendant that no such transaction took place, as alleged in the application. Therefore, there is dispute in respect of the fact that the transactions took place in respect of part of suit properties. Therefore, it became necessary for the plaintiff to implead purchasers, as a party to the suit and accordingly, the plaintiff moved application below Exh. 26, which was came to be allowed and whereby, defendant No. 16 to 18 are came to be added as a parties. However, mere adding party is not sufficient. The plaintiff must seek relief in respect of those transactions and accordingly, plaintiffs are going to do the same by the present application. Therefore, in my view, plaintiffs must have an opportunity to challenged those transactions, which are in respect of the suit properties. There may be some transactions, which are not exactly subsequent to the institution of the suit, but took place when plaintiffs were about to file the suit and plaintiffs were ignorant about the same. Those transactions cannot be called subsequent transactions. However, it may possible that plaintiff were not aware about the same at the time of filing of the suit. It does not mean that plaintiffs are barred from challenging those transactions by way of an amendment. It is seen that by the present proceeding, the main relief, sought by the plaintiff is of partition. While seeking that main relief, plaintiffs have already sought relief of declaration in respect of some transactions, that, those are not binding upon them. Therefore, when plaintiffs are now moved the present application,

seeking same kind of relief, in respect of other transactions, it cannot be said that it would change nature of the suit. Therefore, obviously, it would not cause prejudice to the right of the other side. Even, after allowing the amendment, plaintiffs would file their amended plaint and defendants would have an opportunity to file their amended written statement / additional written statement, if any. Therefore, at this juncture, it is not necessary to go through the veracity of the alleged fact. Even, as seen earlier, copies of some sale deeds are filed on record and those are sufficient to show that such and such transactions took place in respect of part of suit properties. Therefore, in my view, the proposed amendments would not change nature of the suit and would not cause prejudice to the right of other side. There are some many facets of the amendments, which prima facie make impression that there are proposed lot of amendments. However, on minute perusal, it would show that all those amendments are connected to the transactions in respect of part of suit properties. Therefore, I am inclined to allow the application. Hence, I pass following order.

**Order.**

- 1) The application is allowed.
- 2) Plaintiffs to carry out an amendment within 14 days and shall supply amended plaint and copies thereof.

Place:- Vaijapur  
Date :- 13/04/2015

( D. J. Endait )  
2<sup>nd</sup> Jt. C.J.J.D. Vaijapur.



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**CERTIFICATE**

I affirm that the contents of this P.D.F. file judgment are same, word to word, as per the original judgment.

**Name of the stenographer :** R.S. Chaudhari.

**Court:** 2<sup>nd</sup> Jt.C.J.J.D. Court,  
Vaijapur.

**Date:** 12/08/2014

**Judgment signed by the  
Presiding Officer on:** 12/08/2014

**Judgment uploaded on:** 12/08/2014