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MHAU100000012019



**R.C.S.No.01/2019**

Sayyad Ansar & Ors.

Vs.

Rukhsana & Ors.

**ORDER BELOW EXH.30.**

**(Passed on 04/12/2023)**

(1) The suit is filed for declaration, cancellation of sale deed, partition, separate possession and perpetual injunction. The application at Exh.30 is filed U/o.1 Rule 10 of Code of Civil Procedure (C.P.C.) to add defendant No.6 and U/o.6 Rule 17 of Code of Civil Procedure for amending the plaint. Perused the application. Heard the learned advocate Mr. I.A. Patel for plaintiffs.

(2) Learned advocate for plaintiffs submitted that, the during pendency of the suit defendant No.1 transferred the suit property to Santosh Janardhan Lembhe, Laxman Devrao Autade and Ajay Bhanudas Jadhav through sale deed bearing No.1254/2023 on 26/07/2023. So, plaintiffs filed application U/o.1 Rule 10 of Civil Procedure Code to bring transferee i.e. Santosh Janardhan Lembhe, Laxman Devrao Autade and Ajay Bhanudas Jadhav on record as defendant No.6, 7 and 8. Accordingly, amendment in plaint needs to be required so permission to seek amendment U/o. 6 Rule 17 of C.P.C. is also filed in the same

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application. Advocate for plaintiffs further submitted that, during pendency of the said suit defendants transferred suit property to third party. So, the third party is necessary party to the suit and he should be added. Lastly, he prayed to allow the application.

(3) Defendant No.1 filed his say at Exh.31 and stated that, the application is not maintainable. Here, plaintiffs filed application under Order 1 Rule 10 of C.P.C. and also Order 6 Rule 17 of C.P.C. which create confusion so, he prayed to reject the application. The amendment application if allowed then the nature of the suit will change so the application should be rejected. Third parties purchased the property by registered sale deed and they are in actual possession of the property. To cancel the said sale deed the plaintiffs have filed a separate suit for cancellation of sale deed along with injunction. The plaintiff filed application only to harass the defendants. Lastly, he prayed to reject the application.

(3) After considering the submission and on perusal of document filed on record. As per Order 1 Rule 10(2) of the Code of Civil Procedure.

*"The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have*

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*been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added”*

(4) From the plain reading of above provision it can be gathered that, the party whose presence is necessary in order to enable to Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added. In the present case, it is the contention of the plaintiffs that, the third party interest is involved as the suit property was alienated in his favour so he becomes the necessary party. In such circumstances, to avoid the technicality the third party namely Santosh Janardhan Lembhe, Laxman Devrao Autade and Ajay Bhanudas Jadhav be added as defendant No.6, 7 and 8.

(5) It is seen that, plaintiffs have filed an application for permission to add party and amendment in that regard only. Here the valuable rights of the parties are involved in the property. Hence, to avoid multiplicity of proceeding and to determine the rights of the parties properly, the amendment needs to be allowed. The proposed amendment will also help the Court to decide the matter on merits. In view of aforesaid discussion, I am of the considered view that application deserves to be allowed. Hence, I pass following order.

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**:-: O R D E R :-:**

- (1) The application below Exh.30 is allowed.
- (2) The plaintiffs are allowed to add proposed party namely Santosh Janardhan Lembhe, Laxman Devrao Autade and Ajay Bhanudas Jadhav as defendant No.6, 7 and 8 to the suit within two weeks vide Order 1 Rule 10 of the Code of Civil Procedure.
- (3) The plaintiffs are hereby directed to effect amendment within 14 days from this order.

Sd/-

(Dr. S. V. Rajkuntwar)

Civil Judge (Jr. Dn.)

Khultabad, Distt. Aurangabad

Date :- 04/12/2023

**C E R T I F I C A T E**

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

Name of the  
Stenographer :- ***Akash S. Chavan***

Name of the Court :- C.J.J.D. and J.M.F.C. Court,  
Khultabad.

Dated :- 04/12/2023

Order signed by the  
Presiding officer on :- 04/12/2023

Order uploaded on :- 05/12/2023