

ORDER BELOW EXH. 79.

Present application is filed by plaintiff under Order VI Rule 17 and Order I, Rule 10 of the Code of Civil Procedure (hereinafter referred as 'the CPC') for amendment of suit. Perused application and say filed by defendant No.3 below Ex.82. Heard both sides.

2. It is submitted by plaintiff that, plaintiff has filed present suit for partition and declaration. It is contended by plaintiff that, plaintiff had denied ownership of defendant no.3 and sought prayer for cancellation of sale deed. While suit was pending and its entry was already taken on 7/12 extract of the suit property, when plaintiff received record of suit property on 06.12.2018 he came to know that, name of defendant no.3 was not on suit property. The suit property bearing Gat no.34/2A at Warwade, Tal. Shindkheda Dist. Dhule was in the name of defendant no.3, however, as per record name of one Gaurav Rajkumar Borse was found in record. The mutation entry no.2567 was also found for said transaction. When plaintiff sought mutation entry no.2567 he came to know that, defendant no.3 sold said property on 01.08.2016 for amount of Rs. 13,91,000/- vide document no.3066/2016 at Registrar Officer, Shindkheda. As defendant no.3 as well as said Gaurav Borse were aware about pendency of present suit as per entry in 7/12 extract, they entered in transaction of sale. Under such situation in order to avoid execution of decree in present suit, adding said Gaurav Rajkumar Borse in present suit as a party became necessary. Therefore, prayed for amending the plaint in that regard and addition of a para contending all those contentions of plaintiff.

3. On the contrary except defendant no.3 no defendants filed their say on present application. Thus, no say order passed against them.

Defendant no.3 has filed her say at Exh. 82 and contended that, application of plaintiff, contentions and prayer in the application are false and illegal. Application is illegal and not within limitation. Though, as per amendment plaintiff sought addition of name of said Gaurave Borse as suit property was transferred in his name, however there is no prayer in respect of said sale deed. Thus, when said sale deed remains absolute, there is no purpose of present suit. As plaintiff has not sought any prayer in respect of said sale deed, there will be no effect on said sale deed. Thus, adding said Gaurav as a party in a suit will be useless and therefore, present application is liable to be rejected.

4. Heard learned advocates for both the parties. Considering the rival submissions of the parties following points arise for my determination. Findings thereon are recorded for the reasons discussed herein under;

Sr. No.	POINTS	FINDINGS
1.	Whether proposed amendment is just and necessary for determining real question in controversy between the parties ?	Yes.
2.	What order ?	Application is allowed.

REASONS

As to point No. 1 and 2 :-

5. It is pertinent to note here that, while adjudicating application for amendment of plaint, as per provision of Order 6 Rule 17 the amendment in pleading can be allowed whenever necessary to adjudicate the real question in controversy between parties. Such amendment can be allowed before the commencement of trial. In the present suit issues have not been framed. Thus, the trial of suit is not commenced.

06. Amendment in plaint is in respect of addition of subsequent

development in respect of suit property made by defendant no.3. Plaintiff seeks to amend the plaint in respect of act of defendant no.3 whereby despite of pendency of suit, she transferred suit property to third party by sale deed. The plaintiff seeks to amend and adding para No.7A in the plaint. Present suit is filed for the relief of partition and declaration and cancellation of sale deed. By proposed amendment plaintiff is seeking to add certain developments in respect of transfer of suit property to third party i.e. Gaurav Rajkumar Borse and adding his as party. The relief sought in the main suit and as per proposed amendment are equivocally relevant to each other and it will not be possible to decide main suit without making such development in the dispute. Therefore, in order to adjudicate real controversy between the parties on merit and in the interest of justice such amendment is required to be allowed. It will not prejudice to the defendants. So also, adding Gaurav Borse as party and further development in respect of suit property will not change the nature of suit and defendants will not suffer any loss. But if application is rejected plaintiff will suffer irreparable loss. Hence, I record my finding as to point No.1 in affirmative and in the result of point no. 2 I proceed to pass following order.

ORDER

1. Application Exh. 79 to amend the plaint is allowed.
2. Plaintiff is directed to carry out amendment within prescribed period.
3. Plaintiff to file amended copy on record.

Sd/-

Date: 25/08/2021

(Sujit A. Rathod)
Civil Judge Junior Division,
Dondaicha.

- Certificate -

I certify that the contents of this PDF File are word to word as per Original Judgment / Order.

Name of the Steno : B. N. Thorat

Name of the Court : Civil Court Junior Division, Dondaicha.

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Sd/-
Stenographer (L.G.)