

**ORDER BELOW EXH. 24**

(Passed on 09 July, 2021)

The present application filed by plaintiffs for amendment in plaint as per Order 6 Rule 17 as well as addition of parties as per Order 1 Rule 10 of the Code of Civil Procedure.

2. Plaintiffs stated that they filed the present suit for partition, separate possession, declaration and perpetual injunction. Plaintiffs further averred that they are under impression that defendant no.8 Vasanta Desai has purchased 0.40 H.R. land out of the suit property on 18-12-2017, therefore, they filed the present suit against defendants. Plaintiffs further averred that they came to knowledge that defendant no.8 Vasanta has purchased 0.40 H.R. land on the name of his wife Janita Desai. Plaintiffs further averred that for proper adjudication of the present suit, Janita is a necessary party. Therefore, plaintiffs filed the present amendment application along with addition of party to Janita i.e. proposed defendant no.13. Accordingly, plaintiffs want to amend the suit. Hence, plaintiffs filed the present application.

3. Defendant no.1 to 3 filed their say and averred that plaintiffs are trying to fill the lacuna in suit. Defendant no.1 to 3 strongly objected the present application. Therefore, defendant no.1 to 3 prayed for rejection of the present application with costs.

4. Heard learned advocate Mr. P.N. Sangidwar for plaintiffs and learned advocate Mr. S.K. Bawariya for defendant no.1 to 3. The present suit is proceeded ex-party against defendant no.4 to 12.

5. perused the record. After perusal of record it appears that plaintiffs filed the present suit for partition, separate possession, declaration and perpetual injunction.

6. As per Order 1 Rule 10 of the Code of Civil Procedure the court may at any stage of the proceeding, either upon or without the application of either party may add any person as a party to the suit.

7. As per Order 6 Rule 17 of the Code of Civil Procedure the court may at any stage of the proceeding in the interest of justice allow amendment in the pleading. No application for amendment shall be allowed after trial has commenced, unless court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial.

8. Perused the record. After perusal of record it appears that plaintiffs filed the present suit for partition, separate possession, declaration and perpetual injunction. The suit is related to the immovable property. After perusal of plaint it also appears that plaintiffs prayed for declaration of sale deed dated 18-12-2017 is not binding upon them. In the present application plaintiffs averred that they came to knowledge that defendant no.8 Vasanta has purchased 0.40 H.R. land in the name of his wife Janita Desai, therefore, for proper adjudication of the present suit, Janita is a necessary party. However, as mentioned above plaintiffs have knowledge regarding sale deed dated 18-12-2017 at the time of filing of the present suit. Therefore, it is clear that plaintiffs have made contrary statement as mentioned above in their plaint and in the present application regarding sale deed dated 18-12-2017. Moreover, after perusal of record it appears that plaintiffs does not annexed certified or xerox copy of said sale deed dated 18-12-2017 along with the plaint and with the present application. Therefore, it is not clear that defendant no.8 Vasanta's wife Janita has purchased said property by way of sale deed dated 18-12-2017. Therefore, it is not clear that Janita is a

necessary party to the present suit. Moreover, the present suit is pending for evidence. As per Order 6 Rule 17 of the Code of Civil Procedure, no application for amendment shall be allowed after trial has commenced, unless court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. In the present application plaintiffs could not have raise due diligence before the court for amendment of the plaint before commencement of the trial or evidence. Accordingly, as discussed above addition of party and proposed amendment is not necessary for just and effective decision of the present suit. Therefore, the present application of plaintiffs deserves to be rejected. Therefore, in the interest of justice I proceed to pass the following order.

**ORDER**

The present application is hereby rejected.

Date:- 09-07-2021

Sd/-  
Mohmad Wasim Akram  
S/o Mohmad Jalal Sheaikh  
Civil Judge Junior Division  
Deori.