

Order below Exh-46

1. Perused. Heard.
2. Suit in hand is for declaration and injunction on the claim that suit property was originally owned by the mother of plaintiff No.1 and the grandmother of plaintiff No.2 namely Smt. Nanbai Ghanshibhai Visaraya. For development of the suit land Nanbai had executed power of attorney in favour of her husband Ghanshibhai Visaraya. However, when plaintiffs went through the revenue record of the suit property it revealed that names of defendant No.1 and 2 are mutated in the records of suit property on the strength of the registered sale deed purported to be executed by power of attorney of Smt. Nanbai by name Premji Gansi. According to plaintiff suit property was never alienated to defendants hence, contended the sale deed is forged and fabricated and not binding on plaintiff. Hence, the suit.
3. During the course of the proceeding defendant No.1 & 2 mortgaged the suit property with defendant No.3 vide registered mortgage deed against the loan taken by them. Therefore, on an application filed by plaintiff defendant No.3 was added in the array of the defendants vide order dated 05/09/2019 passed by my learned Predecessor below Exh.37.
4. Now as plaintiff wants to seek relief in respect of the aforesaid mortgage deed hence filed the application in hand under

Order VI Rule 17 of CPC. Countering the application reply of defendant is filed at Exh.44. It is contended that defendant No.1 and 2 have mortgaged other properties also against the loan amount. However, those properties are not included in the present suit. Hence, submitted the application is not maintainable, deserves to be rejected with costs.

5. In circumstances discussed supra, as proposed amendment is in respect of the subsequent changes beyond the control of plaintiff and if allowed will not change the colour and nature of the suit and no prejudice will cause to defendants. Further, for end of controversy on merit, to avoid multiplicity of proceedings, moreover, this is the fact finding trial court hence in the interest of justice application needs to be allowed. Hence, the order.

Order

- i- Application allowed.
- ii- Plaintiff to carry out proposed amendment in plaint on or before next date and subject to cost of Rs.100/- to DLSA., Jalna.

Date: 26-11-2019

Sd/-
(H.A.Ansari)
Jt. Civil Judge (S.D.)
Jalna.