



R. C. S. No. 38/2018
Pravin Vs. Anita & Ors.
CNR No. MHJN090002702018

ORDER BELOW EXH. 46

Present application is filed by the plaintiff for amendment under Order 6 Rule 17 of the Code of Civil Procedure. It is submitted that during pendency of the present suit, defendant no. 4 has created third party interest in the suit property by transferring 60 R land to one Babasaheb Bhaurao Sonawane vide registered sale deed no. 2039/18. It is hit by the provisions of the Transfer of Property Act. The party who has purchased the aforesaid land is also a necessary party to the suit. It is further submitted that notices of the present suit have already been served on defendants and they have appeared in it. Their written statements are awaited except defendant no.4. Therefore, no prejudice will cause to the parties in the suit. The suit is at preliminary stage. Thus, by the proposed amendment, plaintiff has prayed to allow him to insert averments in this regard by inserting para 5A as well as title clause of the plaint.

2] Defendant no. 1 to 3 and 5 have not filed their say to the present application. Hence, it has proceeded without their say. The application is opposed by defendant no. 4 by filing his say at it's overleaf. He submitted that he has bonafidely alienated the suit proeprty prior to the institution of the suit. Same fact is mentioned in his written statement (Exh. 40). This fact was well within the knowledge of the plaintiff. As per the application filed by the plaintiff dated 1/7/2018 he admitted the fact of alleged conveyance. The entire

application does not state any reason in respect of delay. He ought to have filed the present at the earlier possible opportunity. Moreover, adding more parties will change the nature of the suit. Hence, on these grounds, he has prayed to reject it.

3] Heard Ld. Advocate for the plaintiff. None present for defendants. Present suit is filed for partition and separate possession as well as for perpetual injunction. It is the case of the plaintiff that the land to the extent of 80 R and 70 R in gut no. 19 and the land to the extent of 40R, 60 R and 1.02 R is the ancestral property of himself and defendant no. 1 to 3. Earlier it was in the name of his father Ashokrao. After demise of Ashokrao, plaintiff and defendant no. 1 to 3 became the owners of it. Defendant no. 3 is cultivating the land at gut no. 19 whereas the land at gut no. 25 is in actual possession of the plaintiff. But it is in the name of plaintiff as well as defendant no.3. By taking disadvantage of the name, defendant no. 3 has sold 60 guntha land to defendant no. 4. In fact, said land is in the possession of the plaintiff. Further defendant no. 4 has executed agreement to sale in favour of defendant no.5. Therefore, plaintiff has claimed his share as well as perpetual injunction against defendants.

4] By the present application, it is submitted that defendant no. 4 has sold said 60 R land to one Babasaheb Bhaurao Sonawane during pendency of the suit. Record reveals that present suit is filed on 25/5/2018. Plaintiff has filed copy of sale deed in support of his contention. It reveals that it is executed on 29/5/2018. It clearly shows that defendant no. 4 has alienated the said land after institution of the

suit. However, as the suit is filed on 25/5/2018, there is a possibility that plaintiff might not be aware of the alleged transaction. This fact is disclosed by defendant no. 4 in his written statement (Exh.40). Moreover, plaintiff had filed an application below Exh. 36 for temporary injunction. In which he has also stated the same. Thus, it is clear that the said 60 R land came to be alienated during pendency of the suit. Therefore, this being a suit for partition and plaintiff has specifically claimed his share in it, the rights of subsequent purchaser appear to be vested in it. Moreover, the facts, which the plaintiff is seeking to bring on record have occurred after filing of the suit.

5] Present suit is at preliminary stage and the proposed amendment does not change it's nature. Hence, I find that present application deserves to be allowed. It will help the Court to determine the controversy on merits. Thus, considering these facts and circumstances, following order is passed :

ORDER

- 1] Application (Exh. 46) is allowed.
- 2] Plaintiff is permitted to amend the plaint in light of the present application.
- 3] He shall carryout the amendment within 14 days from today and submit amended plaint on record and supply the same to the other side.

Sd/-

Date : 21/12/2018

S. D. Kamalakar
Joint Civil Judge,
(J. D.) Badnapur.