



ORDER PASSED BELOW EXH.93

1. This application is filed by plaintiff under Order 6 Rule 17 of the Code of Civil Procedure seeking permission to carry out some amendment in the plaint.

2. **Facts of application, in short are as under :-**

This suit is filed by plaintiff for simplicitor injunction. However, during pendency of suit, defendant Nos.1 to 5 have alienated some portion of suit property in favour of defendant Nos.9 and 10. Besides that, subsequent purchasers are added in this matter as defendants afterwards. They have taken some stand in respect of their rights. Therefore, this application is filed by plaintiff seeking permission to carry out amendment in respect of those sale deeds. By way of amendment plaintiff wants to insert that those sale deeds are void ab initio and illegal in the eyes of law and same are not binding on the right of plaintiff. Hence, this application.

3. Defendants filed their say and opposed to allow this application contending that sale deed is of year 2011 and plaintiff had knowledge about it. He has not given any reason for filing this application at belated stage. There is delay of about 7-8 years. Hence, prayed for rejection of application.

4. Heard both sides and gone through the record. In this matter trial has commenced. Therefore, proviso provided to Order 6 Rule 17 of the Code of Civil Procedure comes into picture. But it is necessary to note here that in this matter subsequent purchaser has impleaded as defendants on their own application. After filing of written statement by purchaser, plaintiff has moved this application immediately. It is the case of plaintiff that sale deed in question is illegal and void in ab initio and hence he did not seek any declaration in respect of those sale deeds. But considering written statement of subsequent purchaser, he is compelled to make this pleading in respect of those sale deeds. I agree with contention raised by learned advocate for plaintiff as reason explained by him for delay. In the larger interest of justice and in order to decide suit on merit, opportunity needs to be given to plaintiff to insert that portion by way of amendment as prayed. In result, I pass following order.

ORDER

- (1) Application is allowed and plaintiff is permitted to carry out amendment to that effect.
- (2) Plaintiff to carry out amendment and supply amended copy on record on or before next date.
- (3) In case of failure on the part of plaintiff to carry out amendment and supply amended copy on record within time, said order will stand cancelled automatically without any order to that effect.

Sd/-

(**K.G. Sawant**)

Civil Judge Senior Division,
Jaysingpur

Dt.: 19.06.2019.