

MHKO070005662016



REGULR CIVIL SUIT NO. 103 / 2016
Ajitkumar Upadhye and oth. Vs. Bhartkumar Upadhye
Order below Exh 52 (I.A. No. 1 / 2023)

This is an application moved by plaintiff No. 5 under Order I Rule 10 and Order VI Rule 17 for addition of necessary party and amendment of pleading respectively. Say of defendant is at Exh. 53.

02. According to plaintiffs, the suit is for declaration that order of Tahsildar dated 22.04.2016 be declared as null and void, and for perpetual injunction restraining defendant from obstructing peaceful possession of plaintiff over suit property. During pendency of suit, son of defendant purchased land Gut No. 1536 admeasuring 0-H 36-R and he also started disturbing peaceful possession of plaintiff over suit property. Accordingly, plaintiff is intending to bring on record said land purchased by son of defendant as another suit property, and also bringing on record said son of defendant as necessary party. Hence this application.

03. Vide say at Exh. 53 defendant resisted the application. According to him, his son was not party to the proceeding before Tahsildar and therefore there is no necessity of arraigning his son as necessary party to this suit. It is his further contention that the property purchased by his son is no way concerned with this suit

property and therefore there is absolutely no necessity for carrying out any amendment in the pleading. He accordingly requested to reject the application.

04. Perused application and say. Also perused record and proceeding. Heard learned Advocate Shri D.B.Patil for plaintiff and learned Advocate Shri M.B.Koli for defendant.

05. Record shows that issues are framed at Exh. 28 and affidavit of P.W.No. 1 in the form of examination-in-chief is filed at Exh. 31, but he is yet not cross-examined. Therefore, technically speaking, there is no strict rigor of provisions of Order VI Rule 17 of C.P.C. applicable at this juncture.

06. At the outset, it is required to mention that there are 9 plaintiffs in the proceeding and this application is filed with signature of plaintiff No. 5 only. If the pleading of all the plaintiffs is required to be amended, the application should have been signed by all plaintiffs.

07. It is further seen from pleading, particularly from paragraph No. 1 of plaint that the order of Tahsildar dated 22.04.2016 is arraigned as subject matter, without specifying the description of any land of any of the plaintiff as "suit property". In absence thereof, it is not clear as to what sort of relief of perpetual injunction is being claimed by plaintiffs vide original suit.

08. It is contention of plaintiff No. 5 that plaintiffs had purchased area admeasuring 960 Ft. x 12 Ft. out of land Gut No. 1536 for access to their lands. It is their further contention that defendant is disturbing plaintiffs from using said approach road. However, it is seen that without arraigning said area admeasuring 960 Ft. x 12 Ft. out of land Gut No. 1536 as "suit property", this suit is being continued by them. Therefore, prima facie, it is seen that there is absolutely no suit property involved in this suit. In such circumstances, there is no reason to add another suit property in this matter.

09. It is worth consideration that the property purchased by son of defendant is being arraigned as suit property by plaintiffs by way of this application. However, it is absolutely not clear from contentions of plaintiffs as to how property purchased by son of defendant has nexus with the subject matter. It is also worth mentioning that the suit is of the year 2016 whereas the Sale Deed of land purchased by son of defendant is of the year 2014, and in such circumstances it is not made clear by plaintiffs as to why said land purchased by son of defendant was not included initially while filing the suit. Lastly, it is absolutely not clear from the version of plaintiffs as to how the land purchased by son of defendant can be the subject matter of order of Tahsildar dated 22.04.2016.

10. Therefore, considering all the abovesaid, I am of the view that there is no substance in the application, there is no need of addition of land purchased by son of defendant as suit property in this dispute, there is no need of addition of son of defendant as necessary party, and there is no need of any consequential amendment pertaining to valuation of the subject matter. As a result, I am of the view that the application is liable to be rejected. Thus following order.

ORDER

Application is rejected.

Date : 09.05.2024
Jaysingpur

(**Anand D. Karbhajan**)
Jt. Civil Judge (Junior Division),
Jaysingpur, Tq. Shirol, Dist. Kolhapur