



**Sunita Shivaji Dhonukshe etc.02 Vs. Shivaji
Ishwar Dhonukshe etc.05**

CNR - MHKO130007082021

ORDER BELOW EXH.18 IN R.C.S.No. 137/2021

1. This is the amendment application submitted by the plaintiff under Order 6 Rule 17 of the Code of Civil Procedure (In short 'CPC') for making amendment in the plaint.
2. It is pleaded by the plaintiff that, the suit is filed for partition and separate possession. However, defendant is trying to alienate the suit property in favour of third persons. The defendant has already sold one of the suit property in the name of Supriya Hanmant Morbale. The said fact recently came to the knowledge of the plaintiff. Therefore, to seek grievance against the said action of the defendants, this amendment application is moved.
3. Through the proposed amendment, the plaintiff wish to insert the transaction that was taken place in between defendant No. 1 & defendant No. 7. The plaintiff is seeking her share in the said suit property which is alienated in favour of defendant No. 7. Therefore, the plaintiff wish to change the cause of action, she also wish to change the valuation column of the suit and the prayer column wherein the plaintiff is wish to seek declaration in respect of the alleged sale-deed that, it is not binding on her share. Thus, on the basis of these factual aspects the plaintiff has prayed to allow this application.
4. The application is objected by the defendants by submitting their say on the overleaf of this application. It is

submitted that the plaintiff was having her consent to the execution of the sale-deed. The said fact was within the knowledge of the plaintiff when the sale-deed was executed. Therefore, on the basis of these factual aspects, the plaintiff has no right to seek amendment at this stage. Hence, the defendant has prayed to reject the application.

5. Heard learned Advocate Shri. O.S. Diwan for the plaintiff and learned Advocate Shri. G.V. Chaugale for the defendant.

6. In view of rival submissions from both sides, following points are arised for my determination and my finding with respect to the same points is as under-

	<u>POINT</u>	<u>FINDING</u>
1.	Whether the proposed amendment is necessary for deciding real controversy in the suit?	In the Affirmative.
2.	Whether the proposed amendment will change nature of the suit ?	In the Negative.
3.	What order?	As per final order.

-: REASONING :-

As to Point No. 1 & 2:-

7. Both the points are interlinked to each other. Thus, to avoid repetition of facts, these points are discussed together.

8. Perusal of the rival pleading of both the parties, one thing is clear that, execution of the sale-deed by defendant No. 1 in favour of defendant No. 7 is not specifically disputed by the

defendants in their say. It is the only contention of the defendant that, the plaintiff was having knowledge about the execution of the sale-deed prior to the institution of this suit. However, in my opinion, that aspects is part of the merit which will be decided at the final stage of the suit.

9. It is settled by the catena of the judgments of the Hon'ble High Court & Hon'ble Apex Court that, merits of the amendment application should not be considered while disposing the application. Indeed, the sale-deed seems to be executed before the institution of this suit. However, through this application the plaintiff wish to insert the factual aspects pertaining to execution of the sale-deed in paragraph No. 4-A, thereafter, cause of action in paragraph No. 6, valuation in paragraph No. 7 and declaration in respect of the sale-deed in the prayer clause at paragraph No. 11-D.

10. No doubt, this is the suit for partition. Therefore, in the suit for partition all the ancestral properties should have to be included in the "common-hotchpotch" while instituting the suit. Else, the suit may suffer the technical lacuna. No doubt, the disputed sale-deed is seems to be executed prior to the institution of this suit, as it appears from the date of sale-deed. The suit is filed for partition. The proposed amendment is relating with the aspects that are essential for the suit for partition. The suit is at initial stage, wherein written statement is yet to be filed. The suit is yet to be put on hearing stage. Thus, on the backdrop of these factual aspects, I think the proposed amendment is necessary for deciding the real controversy between the parties and the same will not change nature of the suit. Resultantly, I answer point no.

1 in the affirmative & point no. 2 in the negative.

As to point No. 3:-

11. As point No. 1 is answered in the affirmative & point no. 2 is answered in the negative, the application is liable to be allowed. Hence, in answer to point No. 3, following order is passed-

ORDER

1. The application (Exh. 18) is allowed subject to cost of Rs. 200/- payable to the defendant within 7 days from today.
2. The plaintiff to make necessary amendment within 14 days and to submit amended copy of the plaint forthwith.

Kagal
Date:- 02/09/2022

(A. B. Jawale)
Jt. Civil Judge Junior Division,
Kagal.