

COMMON ORDER BELOW EXH. 39 & 41

(Passed on 22.03.2017)

01. The plaintiff has filed Exh. 39 for amendment in plaint and Exh. 41 for addition of party. Perused both the applications. The defendant has filed his reply on the applications itself. In respect of Exh. 39, he has pleaded that as the suit is pending for hearing, the plaintiff is not entitled to file this application for amendment. The proposed amendment is not at all concern with the suit. There is no relevancy of this suit and R.C.S. No. 364/2014. The proposed amendment will change the nature of suit and cause injustice to the right of defendant. Hence, application be rejected. In respect of Exh. 41 he has pleaded that the suit is only for perpetual injunction, hence, the proposed defendant is not at all concern with this suit nor he is necessary party to the suit. Hence, Exh. 41 be rejected.

02. Considering the rival pleadings of both parties following points arise for my determination and I have recorded my findings against them with reasons as discussed below.

POINTS**FINDINGS**

- | | |
|--|----------------------------------|
| 1. Whether the plaintiff is entitled for amendment in plaint and for addition of ... party as sought in these applications ? | <u>In negative.</u> |
| 2. What order ? | ... <u>Application rejected.</u> |

REASONS

As to points No. 1 & 2 :-

03. Heard learned counsel for both parties at considerable length. Perused case record. The plaintiff has filed this suit for perpetual injunction simplicitor. The plaintiff has pleaded that he has half share in suit well but the defendant obstructing his peaceful enjoyment of his half share in the well. On careful perusal of proposed amendment, it reveals that the plaintiff is intending to plead some facts in respect of R.C.S. No. 364/2014 and also claiming relief of declaration that the decree passed in said suit is null and void and not binding on his right of well. Moreover, vide Exh. 41, he intending to implead the defendant of said suit as party to this suit.

04. On perusal of certified copy of decree of R.C.S. No. 364/2014 filed under list Exh. 48, it reveals that said suit was filed by the present defendant against one Sunil Manohar Khobare for declaration and injunction. The plaintiff has also filed certified copy of compromise deed filed in said suit. It appears that the plaintiff and defendant of said suit compromised the matter and the decree is passed in terms of compromise deed. I am of the view that as the plaintiff is not party to said suit, the decree passed in said suit is not binding to the plaintiff. On careful perusal of those documents, it reveals that the parties to the said suit were in collusion and the plaintiff of said suit got compromise decree. However, I am of the view that the proposed defendant is not at all concern with this suit. Moreover, as the plaintiff is not party to said suit, the decree of that

suit is not binding to the present plaintiff and as such there is no need of proposed amendment. I am of the view that no purpose would serve by allowing proposed amendment and by addition of party. Considering above facts and circumstances on record, I am inclined to hold that the plaintiff is not entitled to relief of amendment in plaint and addition of party as claimed in both the applications. Therefore, my answer to point No. 1 is in negative. As such, both the applications deserves to be rejected. Hence, following order.

ORDER

1. The applications Exh. 39 & 41 are hereby rejected.
2. No order as to costs.

Nilanga.
Dated : 22.03.2017.

Sd/-
(R. N. Barad)
Civil Judge Senior Division,
Nilanga.