

ORDER BELOW EXH. 163
CNR No.MHLA150000802009

The present application is moved by the plaintiffs under Order 6 Rule 17 of the Civil Procedure Code for amendment in plaint. According to them, they filed suit for partition against defendants and the matter is fixed for evidence. During trial defendant no.3 sold out land Gat No.159/1/2 adm. 1 H. 9 R. vide registered sale deed No.2066/10 on 27/09/2010 to Sayyad Sharif Abbas i.e. defendant no.8. Defendant No.2 also consented to this transaction. Though defendant No.8 is included in suit but the fact of transaction and the document is remained to be mentioned in the body of plaint. The said transaction is after filing of suit. So they prayed for addition of fact that the said sale deed No.2066/10 is illegal and executed with intention to deceive the right of plaintiffs and prayed for cancellation of sale deed. So they want to add paragraph No.9-B & 9-C after paragraph No.9-A. So also wants to amend prayer clause and add prayer as 2-A accordingly.

2. On the other hand, learned advocate for defendant no.2 to 6 opposed the application on the ground that, as per Exh.51 dated 26-11-2010 amendment application is moved and name of defendant No.8 is added. Thereafter, vide application below Exh.63 on dated 28/02/2011 again amendment is carried out. Then also vide Exh.118 again amendment is carried out. After these amendments present application is moved. By this amendment the entire nature of suit will be changed and law does not permits such type of amendments. Plaintiffs only prolong the matter and delayed tactics is played by them. So they prayed for rejection of this application with cost.

3. Heard both the sides, perused the record and documents. Learned advocate for plaintiff also filed written notes of argument on dated 19/01/2019 below Exh.166. According to them the proposed amendment is regarding the document which prepared by defendant no.2 and 3 in respect of land Gat no.159/1/2 adm. 1 H. 9 R. out of 3 H. 28 R. vide sale deed No.2066/2010 and land Gat No. 159/1/2 adm. 1 H. 9 R. out of 3 H. 28 R. vide sale deed No.2065/2010. Both the sale deeds executed on 27/09/2010.

4. Defendants not brought those documents into the notice of plaintiff or court. Due to which, plaintiff did not aware regarding both these documents. Moreover, the name of defendant no.8 was added to the suit upon apprehension that defendants were going to make transaction regarding suit property on dated 21/01/2010. But the transaction, thereafter is not known to plaintiffs. Moreover, names are also not recorded on 7/12 extract as per sale deed. Hence, upon information about transaction this application is moved by plaintiffs.

5. On the other hand, though defendant resisted the application but in RCS No.54/2010 vide reply to Exh.123 they submitted that, the said transaction was nominal one and only for security of loan without handing over the possession. Thus name on 7/12 extract are not recorded as per sale deed. Hence, the submission of plaintiffs seems proper and appropriate. Moreover, perusal of application and order below Exh.51 in this suit also shows that, plaintiffs added name of defendant no.8. But the portion regarding transaction about sale deed no.2066/10 and 2065/10 remained to be inserted and amended. Moreover, present suit is filed on dated 03/07/2009 and alleged transaction was on dated 27/09/2010. Thus the transaction has been

made during pendency of suit. Moreover, considering order below Exh.51 and submission of defendants that such transaction is only for security of loan without handing over possession and on condition that no 7/12 extract is recorded in the name of purchaser, the proposed amendment appears to be necessary for determining the real controversy between the parties.

6. Considering the nature of suit and claim of plaintiff, the proposed amendment will not change the nature of suit and no prejudice would be caused to defendants. But heavy loss and great injustice will be caused to plaintiffs. As per Order 6 Rule 17 of the Civil Procedure Code the party can amend his pleading at any stage before commencement of trial if the proposed amendment does not change the nature of suit and is not prejudicial to another side and is necessary for just decision in the matter. But no amendment is allowed after trial commences unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

7. On perusal of record it appears that though the trial is commenced, but considering the nature of transaction during pendency of suit and names of purchaser not to be recorded upon 7/12 extract shows that in spite of due diligence plaintiffs were unaware regarding transaction. The proposed amendment does not change the nature of suit and is not prejudicial to another side and is necessary for just decision in the matter. Hence, in my opinion the amendment is necessary to decide the real controversy and to avoid multiplicity of proceedings between the parties and does not change the nature of suit. No prejudice is caused to defendant. Hence, I pass the following order.

ORDER

1. Application is allowed.
2. The applicant / plaintiffs are directed to carried out proposed amendment within 14 days from the date of this order.
3. Plaintiff shall supply the copy of amended plaint to the court and the other side.
4. The defendants are at liberty to move consequential amendment application if any.

Date- 22-01-2019

(Yogesh D. Koinkar)
C.J.J.D., Chakur.