


<b>MHND190007982011</b> 	<b>R.C.S. No. 124/2011</b> <b>Rukminbai Vs. Machindra</b>
--	--

**ORDER BELOW EXH. 150.**  
**(Passed on 16/10/2024)**

This application moved by the plaintiffs under Order 6 Rule 17 and under Order 1 Rule 10 (2) of the Code of Civil Procedure to join the purchaser of the suit property namely Rajiv Sambhaji Yede as defendant No.12. It is contended by the plaintiffs that said purchaser is necessary party to this suit.

**2)** According to the plaintiffs, this suit is filed for reopening of partition and separate possession. It is further contended that during the pendency of this suit defendant No. 05 to 08 have executed nominal sale deed in respect of the suit property Gut No.1 in favour of proposed defendant No.12 . The said sale deed is executed back behind of the plaintiffs and with intention to deprive the plaintiffs from their shares in said suit property. It was executed during the pendency of this suit. Therefore, being necessary party it is necessary to join the purchaser in the suit as defendant No. 12 and also it is necessary to make amendment in the plaint in respect of this fact. They have also contended that, during the pendency of this suit defendant No.2 and 3 have executed sale deed in respect of suit property Gut No. 76 in favour of defendant No.

10. The sale deed in respect of suit property dated 12.05.2014 is also executed during pendency of this suit. Therefore, it is necessary mention these facts in the plaint by way of amendment. Lastly prayed for join said purchaser as defendant No.12.

**3)** Defendants have filed their say at Exh. 152 and strongly opposed this application. They have contended that, plaintiffs have claimed two reliefs in one application which is not permissible by law. They have further contended that, plaintiffs have filed to this application for amendment after laps of period of 9 to 10 years, therefore, the relief of declaration claimed by way of amendment is not within limitation as per Section 58 of the Limitation Act. It is further contended that, plaintiffs have claimed amendment in respect of sale deeds executed on 09.05.2013 and 12.05.2014 which is not within limitation and plaintiffs have not claimed initially said amendment even having knowledge of the same. Plaintiffs have no right in suit property Gut No.1, Therefore, the purchaser Raju Sambhaji Yede is not necessary party in the suit. The prayed amendment if allowed it will change the nature of the suit and it will cause prejudiced to the defendants. On these grounds they have prayed for rejection of the application.

**4)** Perused the application and record. Also perused say filed on behalf of defendants. Heard both side at length. It is contention of the plaintiffs that during the pendency of this suit defendant No. 05 to 08 have executed nominal sale deed

in respect of the suit property Gut No.1 in favour of proposed defendant No.12 . The said sale deed is executed back behind of the plaintiffs and with intention to deprive the plaintiffs from their shares in said suit property. It was executed during the pendency of this suit. Therefore, being necessary party it is necessary to join the purchaser in the suit as defendant No. 12 and also it is necessary to make amendment in the plaint in respect of this fact. They have also contended that, during the pendency of this suit defendant No.2 and 3 have executed sale deed in respect of suit property Gut No. 76 in favour of defendant No. 10. The sale deed in respect of suit property dated 12.05.2014 is also executed during pendency of this suit. Therefore, it is necessary mention these facts in the plaint by way of amendment and it is necessary to join the purchaser as defendant No.12 and also it is necessary to make amendment in the plaint in respect of this fact.

**5)** The general rule in respect of impleadment of parties is that the plaintiff in a suit, being '**dominus litis**', may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not party has no right to be impleaded against wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10 (2) of Code of Civil Procedure, which provides for impleadment of necessary or proper parties. The said sub rule provides that-

*(2) Court may strike out or add parties.—The Court*

*may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name, of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.*

**6)** The said provision makes it clear that a court may, at any stage of proceedings, either upon or even without any application, and upon any conditions which court deem fit, direct that any following persons may be added as party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the question involved in the suit.

**7)** A necessary party is a person who ought to have been joined as party and in whose absence no effective decree could be passed at all by the court. The proper party is a person in whose absence effective decree can be passed but his presence is necessary in the suit. It is not disputed that the present suit is filed for partition and separate possession. According to the plaintiff, suit properties are joint family and

ancestral properties of plaintiff and defendants and he has claimed his share in suit properties. According to plaintiffs, during the pendency of this suit defendant No. 05 to 08 have executed nominal sale in favour of proposed defendant No. 12. The said sale deed is executed back behind of the plaintiffs and with intention to deprive the plaintiffs from their shares in the suit properties. Therefore, being necessary parties it is necessary to join the purchaser in the suit as defendant No. 12 and also it is necessary to make amendment in the plaint in respect of this fact. They have also prayed for mention the facts regarding sale deeds executed during pendency of this suit dated 09.05.2013 and 12.05.2014.

**8)** Defendants have raised objections in respect of sale deeds dated 09.05.2013 and 12.05.2014 contending that, the relief in respect of the said sale deeds claimed by way of amendment is not within limitation. After perusal of the record it appeared that, as per application Exh. 62 plaintiffs have added the purchasers of both above mentioned sale deeds as defendant No.10 and 11. It also appears that, these sale deeds are also executed during the pendency of this suit. The issue of limitation as contended by the defendants can be decided on merit and defendants have an opportunity to lead evidence in respect of the same. Therefore, on the ground submitted by defendants the said prayed amendment in respect of above mentioned sale deeds can not be denied as it is necessary to determine the real controversy between the parties.

9) According to the plaintiffs sale deed dated 21.12.2022 executed by defendant No. 05 to 08 in favour of proposed defendant No.12 is executed during the pendency of this suit. The property in which respect the said sale deed is executed is also subject matter of the suit. Therefore, to decide the rights of the parties in respect of the suit properties the presence of the subsequent purchaser is also necessary to complete adjudication of the suit and to pass effective decree. Therefore, it appears that he is required to be joined as defendant No.12. Hence, I proceed to pass the following order.

**ORDER**

- 1) The application Exh.150 is hereby allowed as prayed.
- 2) Plaintiffs are permitted to add purchaser of the suit property namely Rajiv Sambhaji Yede as defendant No.12 and permitted amend the plaint as prayed.
- 3) Plaintiffs shall carry out necessary amendment accordingly and file amended copy of plaint till next date.

**Loha**

**Date :- 16/10/2024.**

(Santosh L. Vaidya)  
**Jt. Civil Judge (J.D.),**  
**Loha,Dist.Nanded.**

I affirm that the contents of this P.D.F. file order are same word to word, as per the original order.

Name of Steno (L. G.)	:	Amol U. Kare
Court Name	:	Jt, Civil Judge Jr. Div., & Judicial Magistrate, F. C., Loha, Tq. Loha, Dist. Nanded.
Date	:	16/10/2024.
Order signed by the Presiding Officer on	:	16/10/2024.
Order uploaded on	:	16/10/2024.