

ORDER BELOW EXH. 71

(Passed on this 13th day of January , 2020)

1] The plaintiff has filed this application under order VI rule 17 of Civil Procedure Code for amendment in plaint. In short, it is submitted that, the defendant No.2 herein has sold out the suit property i.e. Khasara No.260/2 to defendant No.5 and 6. The sale deed is executed during the pendency of this suit. After getting knowledge, the plaintiff added defendant no.5 and 6 in the present suit. However, no relief in respect of alleged sale deed is sought for, therefore, plaintiff prayed to allow the amendment for challenge the alleged sale deed.

2] Say of defendant is called for. Accordingly, defendant No.1 and 4, and, defendant No.6 have filed their say through their learned advocates and strongly resisted the prayer of plaintiff. The submission of defendant is that, the alleged sale deed is executed in the year 2012. At the time of previous amendment application, the plaintiff had knowledge that the sale deed is being executed in favour of defendant No.5 and 6. Not only this, the plaintiff also added defendant No.5 and 6 in that regard. Now, the proposed amendment of plaintiff is beyond the limitation prescribed for the relief which is sought for and they prayed to reject the application.

3] Having regard to the submission of both side, I have gone through the record and proceeding. It is clearly seen that, the

plaintiff has filed the application under Order I rule 10 of CPC vide Exh.19 on 15.06.2013. The application at Exh.19 was filed for addition of the defendant No.5 and 6 in respect of the sale deed executed by defendant No.2 in their favour. It is clearly seen that, at the time of filing of application at Exh.19, the plaintiff had knowledge that defendant No.2 executed the disputed sale deed in favour of defendant No.5 and 6, and thus, defendant No.5 and 6 were added as a party defendant. The alleged sale deed is executed in the year 2012 i.e. on 23.11.2012 and the plaintiff had knowledge about the same at the time of filling the application at Exh.19.

4] Now the plaintiff prayed to amend the plaint for challenging the sale deed which is executed in the year 2012. It is clearly seen that, the plaintiff had knowledge about the alleged transaction in the year 2013 when he sought to add the defendant No.5 and 6 in that regard. Now, plaintiff is willing to pray the declaratory relief in respect of the alleged sale deed. The limitation for declaratory relief is of three years. The present application is filed on 07.08.2018 when the prescribed prayer of limitation was already lapsed. If the law of limitation prohibits the plaintiff for seeking the relief then indirectly and by way of the amendment plaintiff cannot sought for the same relief. The proposed amendment of the plaintiff is clearly seen to be beyond the period of limitation, and thus, it cannot be permitted. What is directly prohibited cannot be permitted indirectly, and hence, the

application of plaintiff is liable to be rejected. Hence, I pass following order.

ORDER

- 1] Application is rejected.
- 2] Cost in cause.

Date : 13-01-2020.

(M. V. Chavhan)
Civil Judge Junior Division,
Katol.

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R.C.S.No. 145/2012
Rekha -Vs- Shalu

C E R T I F I C A T E

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

Name of Stenographer : A.P. Dharmik