

MHNG100007762022



Spl. Civil Suit No.28/2022
Rajendra Vs. Prabhakar + 1

ORDER BELOW EXH.17

(Passed on this 05th May, 2026)

Plaintiff has filed this application under Order VI Rule 17 of CPC seeking permission to amend the plaint. Plaintiff wants to add the pleadings and one prayer about the sale deed executed by defendant No.1 in favour of defendant No.2. Defendant No.2 has not filed say to this application. Defendant No.1 has filed say vide Exh.24 to oppose this application. He submits that he has never agreed to sell out the suit plot to the plaintiff and alleged agreement of sale was executed just as a security for the hand loan. Therefore defendant No.1 had every right to sell out suit plot to defendant No.2. The present application is time barred. Therefore it is requested to reject this application.

2] Question before me is – Whether proposed amendment can be allowed in the facts and circumstances of the suit ?

3] In the plaint, plaintiff contends that plot No.89 admeasuring 170 sq.mtr. in N.A. Survey No.86 of village Parsodi, Tah. Umred is the suit plot. Defendant No.1 is its owner. He has agreed to sell out such plot to plaintiff for Rs.548760/- and accordingly executed agreement of sale on 26.05.2020. However despite receiving Rs. Three Lakh towards part consideration, defendant No.1 has failed to execute the sale deed. Therefore after issuing notice on 27.12.2021, plaintiff has filed the suit on 27.04.2022 for specific performance of contract and in alternate for recovery of Rs. Three Lakh with 18% interest.

4] It is submitted in the application that in the month of January 2024 plaintiff came to know that defendant No.1 has sold out suit plot to defendant No.2

by executing registered sale deed. Certified copy of such sale deed was obtained by the plaintiff on 30.01.2024. He moved application Exh.12 on 16.01.2024 seeking addition of defendant No.2. It was allowed on 23.09.2024. This application has been filed on 08.01.2025 seeking amendment.

5] Plaintiff intends to add the pleading about the above sale deed. He wants to add the pleadings to submit that despite existence of agreement of sale in his favour, defendant No.1 and 2 have joined hands with each other and have executed the alleged sale deed. Certified copy of registered sale deed No.3354/21 of date 27.08.2021 is placed on record by the plaintiff on 23.09.2024. Such copy was obtained by the plaintiff on 30.01.2024. Sale deed is of date 26.08.2021. Whereas suit has been filed on 27.04.2022 i.e. after the execution of such sale deed. Plaintiff has not filed on record 7/12 extract of the property in question at the time of filing of the suit. However on last date one 7/12 extract of the suit property is filed on record. It shows that it was obtained on 27.01.2022. Thus it was obtained prior to three months of filing of the suit. However it shows that on that date also, name of defendant No.1 stands in the revenue record of suit plot. Therefore non addition of defendant No.2 and non inclusion of the pleadings about such sale deed and prayer about such sale deed in the plaint at the time of presenting it, can be understood. However copy of sale deed was obtained on 30.01.2024. As per the plaintiff, he came to know about such sale deed in the month of January 2024. Whereas defendant No.1 contends that plaintiff was aware of such sale deed even at the time of filing of the suit and despite of that, present application has been filed in the year 2025, therefore application is barred by limitation. I think that in the above facts and circumstances, question of limitation is mixed question of law and fact. Since the main suit is for specific performance of an agreement of sale about the suit plot and the proposed amendment relates to the sale deed in between defendant No.1 and 2 about the suit plot, I hold that proposed amendment is necessary in this suit. Point of limitation can be taken care of by treating that prayer about such sale deed

has been brought on record by the plaintiff on the date on which the present application has been filed i.e. on 08.01.2025. In the sense that proposed amendment does not relate back to the date of presentation of the plaint. Plaintiff wants to add pleading above such sale deed and wants to add prayer that such sale deed is illegal and is not binding on him. Though the suit is of year 2022, yet the suit has not reached the stage of evidence. Suit is proceeding without WS of defendant No.1. Defendant No.2 has been added on 23.09.2024. She has not filed WS so far. Therefore no prejudice will be caused to the defendants even if this application is allowed. Thus for the above reasons, I pass following order.

ORDER

1. Application seeking amendment in the plaint is allowed.
2. However it is made clear that proposed amendment does not relate back to the date of presentation of the plaint. Proposed amendment is treated to have been brought on record on dated 08.01.2025.

Umred.
Dated : 05/05/2026.

[S. G. Landge]
Civil Judge Sr. Dn., Umred,
Dist. Nagpur.

Certificate

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

Name of Stenographer : Shri. C.D. Gahukar
Stenographer (Grade II)