

**Spl.C.S.No. 16/2017  
Vimaltai Vs. Lalita**

**ORDER BELOW EXH. 45**

Plaintiff has filed this application under O. VI Rule 17 of CPC seeking permission to amend the plaint to add para no. 15 A to introduce the pleadings to the effect that defendant no. 1 had deliberately executed sale deed in favour of defendant no. 2 to deprive the plaintiff of her legal right and despite pendency of this suit in which such sale deed is challenged, defendant no. 1 has filed Spl. C.S. No. 33/2019 against defendant no. 2 for cancellation of sale deed, without adding the plaintiff as party to it.

2] Defendant no. 1 has opposed the application by filing say vide Exh. 48 contending therein that plaintiff is an encroacher and as such is not a necessary party to the above suit and present application is not tenable on the ground of limitation.

3] I have heard Ld. Advocate for the plaintiff and defendant no.1. Suit is proceeding without W.S. of defendant no. 2. I have gone through the record.

4] **Questions before me are** – Whether proposed amendment is essential for determination of real question in controversy and Whether it will cause any prejudice if allowed, to the other side ?

5] In view of plaint pleadings and W.S. of defendant no. 1, issues were framed vide Exh. 30 on 27.03.2019. Power of attorney holder i.e. husband of plaintiff has filed evidence affidavit vide Exh. 40 on 21.12.2021. Further evidence in the form of verification of that affidavit and cross-examination is yet to start. Thereafter, this application has been filed on

21.11.2022.

6] In this application, it is contended that recently i.e. some time before the filing of this application, plaintiff came to know that Spl.C.S. No. 33/2019 has been filed by defendant no. 1 against defendant no. 2 for cancellation of sale deed without adding the plaintiff as party to that suit.

7] It appears from the arguments of Ld. Advocates that sale deed which is challenged in the present suit, is also a subject matter of that suit. As per the submission of Ld. Advocate for defendant no.1, plaintiff is not a necessary party to that suit and as such has not been added as a party in it.

8] In the present suit, plaintiff claims that 50 R. land bearing Survey no. 674 which belongs to mother of defendant no.1, is in the possession of plaintiff. This fact has been confirmed in the measurement of Survey no. 674, carried out on 15.01.2004. In pursuant of that measurement, even notice on date 07.07.2004 was issued by mother of defendant no. 1 to plaintiff calling upon her to vacate such 50 R land. However, except that, no other step has been taken either by mother of defendant no.1 or defendant no. 1. Therefore, plaintiff claims to have become owner of that portion by way of adverse possession. Declaration to that effect is sought for. Plaintiff contends that she is in possession of that portion and despite of that defendant no.1 executed sale deed of that portion in favour of defendant no.2. Therefore, declaration is sought for to the effect that defendant no. 1 having lost her title to that portion, could not execute the sale deed and such sale deed is not binding on the plaintiff. Injunction is sought for against defendant no. 2 to restrain her from disturbing possession of the plaintiff over that portion.

9] Now, by way of amendment, plaintiff wants to introduce her knowledge about Spl.C.S. No. 33/2019. Admittedly, this suit is filed

subsequently. Plaintiff is not a party to that suit. Plaintiff is claiming ownership of that portion by way of adverse possession, which is a subject matter of the sale deed which is challenged in this and in that suit. By way of proposed amendment, no amendment is sought for in the prayer clauses. Therefore, I find that proposed amendment is not going to change the nature of the suit. Even if it is allowed, it will not cause any prejudice to the defendant no.1. In the above back ground, it appears that proposed amendment is necessary to show the existance of subsequent suit. Though the suit i.e. Spl.C.S. No. 33/2019 is filed before the evidence affidavit is filed in the present suit, yet it is a subsequent development with reference to present suit. For all these reasons, I answer questions which are mentioned in para no. 4 accordingly. With this I proceed to pass following order.

**ORDER**

Application (Exh. 45) is allowed subject to cost of Rs. 500/- (Rs. Five Hundred only) to be paid to defendant no.1.

**Sd/-**

Umred.  
Dated: 25/06/2024.

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

**Certificate**

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

Name of Stenographer : **Mr. S. K. Awandkar**  
Stenographer (Gr.II)

Court Name : Civil Judge Senior Division, Umred.