

MHNG140004002017



RCS NO.28/2017  
KAMALA VS. KOTHIRAM

**ORDER PASSED BELOW EXH.38**  
**(PASSED ON 24<sup>th</sup> DAY OF APRIL, 2025)**

- 1) The plaintiff moved this application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 and seeking permission to carry out the amendment in plaint.
  
- 2) The plaintiff submit that the present suit is for the partition and separate possession. During the pendency of the suit the defendant with mala-fide intention to grab the share of the plaintiff, fabricated the false document, seperated the 7/12 extract of the suit property and illegally mutate their names on 7/12 extract and created the third party interest by execution of the Sale Deed to Suresh Pandurang Deshmukh on 07/10/2020.
  
- 3) Therefore, the plaintiff wants to incorporate pleading in respect of such further development by way of proposed amendment that the alleged Sale Deed is not binding on him and have no force of law.
  
- 4) Heard Learned Advocate for the plaintiff and Learned Advocate for the defendant.

5) Learned Advocate for the plaintiff submitted that the defendant has executed the Sale Deed of the suit property during the pendency of the suit. Therefore, the proposed amendment is necessary to adjudicate the matter on merits.

6) Learned Advocate for the defendant submitted that as per Article 58 and 59 of the Limitation Act, the plaintiff need to challenge the Sale Deed within 3 years from the date of execution of the Sale Deed. Therefore, the suit of plaintiff even after carrying out this proposed amendment is time barred. Hence, application cannot be allowed.

7) The defendant has not disputed the execution of the Sale Deed in favour of Suresh Pandurang Deshmukh during the pendency of the suit. The defendant submitted that the suit is not within limitation as the Sale Deed is executed in the year 2020. Therefore, the application for amendment is not tenable in the eyes of law.

8) Whether the suit is within the limitation or not is a mixed question of law and facts. At this stage it will not be proper and lawful to go into the merit of this fact. The disputed fact is that during the pendency of the suit the defendant has executed the Sale Deed of the suit property in favour of the Suresh Pandurang Deshmukh. Therefore, to decide the suit on merit and for the final adjudication the proposed amendment is necessary. As considering the nature of the suit and relief sought by the plaintiff that proposed

amendment is necessary. However, no prejudice would be caused to the defendant if application allowed. The defendant shall have remedy of consequential amendment in his written statement. As considering the facts and circumstances of the case I pass the following Order :-

## **ORDER**

1. Application Exh.38 is hereby allowed.
2. Plaintiff to carry out the necessary proposed amendment within 14 days from the date of order and to file the amended copy on record.

Parseoni  
Dated :- 24/04/2025

(G.O. Wankhade)  
Civil Judge Junior Division,  
Parseoni