

MHNG160001762015



ORDER (BELOW EXH-98)
(Passed on 21.02.2024)

1. The plaintiffs have filed the present application under Order VI Rule 17 of the Code of Civil Procedure for amendment of the plaint.

2. Learned Advocate for the plaintiffs submitted that the plaintiffs had filed the present suit for declaration, permanent, mandatory injunction and for damages. Plaintiff No.1 had purchased S. No. 384/4 ad-measuring 0.93 HR, situated at Mouda, Tah. Mouda, District Nagpur from plaintiffs No. 2 to 4 vide a registered sale deed on 06.08.2010. The said survey number was originally part of S.No. 318/6 ad-measuring 1.69 HR. The said property was received by Shrawan Jangluji Dhanjode in family partition between him and his brother Balchand Dhanjode. Balchand Dhanjode was the father of defendants No. 2 and 3. Shrawan Dhanjode sold the said 1.69 HR land to plaintiffs No. 2 to 4 on 13.07.1984 and the said property came to be renumbered as 382/2 in the resettlement. Plaintiff No.1 was in physical possession of the suit property till 18.04.2019. On 18.04.2019, when he visited the suit field, he found that defendants No. 2 and 3 were doing agricultural operations on the suit field and told that they were the

owners of the said field. The defendants No. 2 and 3 were in wrongful possession of the suit field since then.

3. He further submitted that the main dispute in the present suit was regarding the location of the suit property and its survey number. After purchasing the suit property from Madankar brothers vide registered sale deed dated 06.08.2010, plaintiff No.1 applied for mutation of his name over the said property. However, at that time his name could not be mutated as work of resettlement was going on. Thereafter, the survey department gave S. No. 384/4 to the land purchased by the plaintiff. S. No. 384/4 was part and parcel of S. No. 382/2. Thereafter, S. No. 384/4 was again renumbered as 384/1/A.

4. He further submitted that defendants No. 2 and 3 illegally sold the suit property to defendants No. 4 and 5 through their power of attorney holder (defendant No.6) during the pendency of the present suit. Therefore, it was necessary to amend the plaint in order to bring on record the necessary facts regarding the sale of the suit property in favour of defendants No. 4 and 5 by defendants No. 2 and 3. It was also necessary to amend the prayer clause and seek declaration regarding the said sale deed. It was also necessary to insert the present survey number of the suit property i.e. 384/1/A after the old survey number 382/2.

5. He further submitted that the amendment sought by him was not going to change the nature of the suit. The amendment could not be earlier incorporated as the facts sought to be added by way of amendment came in existence on account of subsequent events. If the application was not allowed, the plaintiffs would be rendered remediless and the suit would become infructuous. Hence, he prayed that the application be allowed and the plaintiffs be permitted to carry out the necessary amendment.

6. The defendants failed to file reply to the present application despite sufficient opportunity. Hence, the application is being decided without their reply.

7. Perused the application and the record. Heard learned advocate for the plaintiffs. On perusal of the application, it appears that the facts sought to be incorporated have arisen on account of alleged sale of the suit property to defendants No. 4 and 5 during the pendency of the present suit. Therefore, the plaintiffs mainly want to amend the prayer clause of the plaint by seeking relief of declaration that the subsequent sale deed executed by defendants No. 2 and 3 in favour of defendants No. 4 and 5 is null and void and not binding on plaintiff No.1. The proposed amendment seeks to bring on record the facts related to the sale of the suit property during the pendency of the present suit. It further appears that the survey number of the suit property has been renumbered to

384/1/A from 382/2. All the said facts have come in existence on account of events and developments subsequent to the filing of the present suit. The amendment sought by the plaintiffs is necessary for final determination of the controversy between the parties. The nature of the suit is not going to be changed by way of the proposed amendment. No prejudice would be caused to the defendants if the application is allowed. On the contrary, the proposed amendment is necessary to avoid multiplicity of litigation. Hence, I pass the following order.

ORDER

- 1] Application is allowed.
- 2] The plaintiffs are allowed to carry out the proposed amendments as mentioned in the present application on or before next date.

Date- 21.02.2024

(A.B.Kadian)
Civil Judge Junior Division,
Mouda