

MHNS130000782019

R.C.S.No.03/2019



Baburao VS.uttamrao

ORDER BELOW EXH.36

The present application is moved by the plaintiffs under order VI Rule 17 for of Code of Civil Procedure, 1908 for amendment of the plaint. The application is opposed by the defendant No.1 by filing his say at Exh.40.

2] Perused the application and say. Heard learned advocates of both parties. It is contended that plaintiffs have instituted this suit for declaration an and perpetual injunction. Defendants filed their W.S, accordingly after framing of issue, plaintiff no.1 filed his evidence affidavit. During cross examination of the plaintiff, it revealed that during pendency of the suit, on 20/11/2020 plaintiff no.2 sold 50 R land to Shobha Vishnupant Kokate, 30R land to Balasaheb Jagannath Jadhav vide sale-deed. Further, plaintiff no.1 transferred 2 H land (one hector each) to plaintiff no.2 and his wife in March, 2021. Thereafter, on 06/09/2023 plaintiff no.2 sold 40 R land to Santosh Yadav Shevkar, Satish Yadav Shevkar and Chetan Yadav Shevkar vide registered sale-deed.

3] Learned advocate Shri.S.M.Shinde appearing for plaintiffs submitted that, he was unaware of the transfer as he was not told by the party. The plaintiffs were not aware of law. He came to know about the transfer of suit property during cross examination of the plaintiffs. He further submitted that the suit property is now standing in the name of wife of plaintiff no.2 and other purchasers. Therefore, they are necessary parties to the suit. Hence, he moved application below Exh.34 for adding wife of plaintiff no.2 as plaintiff no.3 and other subsequent purchaser as party defendants. In view of that transfer and development or subsequent

events, plaintiffs want to add purchaser as defendants and want to carry out certain amendments and add certain contents as a para no.5A after para-No.5 in plaint. By way of amendment, they also want to substitute certain words in para 10A, 10B of the plaint and want it to substitute with proposed amendment.

4] On the other hand, Ld. Advocate Shri.R.V. Kolhe appearing for defendant No.1 submitted that the plaintiffs had encroached upon the land of the defendant to the extent of 14R and the same has been declared by T.I.L.R, Niphad through measurement. Plaintiffs did not hand over the possession of said encroached portion to the defendant, therefore defendant applied for recovery of possession in encroachment case no. 78/2016. The case was decided on 21/09/2018 in favor of the defendant and thereby S.D.O, Niphad ordered plaintiffs to hand over the possession of 14R land to defendant. To avoid the implementation of said order plaintiffs instituted this suit. this suit is instituted in the year 2019 wherein defendants have filed their W.S., accordingly issues are framed. He further submitted that cross examination of the plaintiff is over and suit is for further evidence of the plaintiff. During pendency of the suit, they themselves have transferred the suit property to third party and now plaintiffs are trying to prolong the matter. Hence, he prayed for rejection of application.

5] The suit is pending for further evidence of the plaintiffs. However, property is transferred during pendency of the suit. Ld. Advocate for the plaintiff submitted that parties are not aware of law and he was not aware of the transfer as the plaintiffs did not inform him. He has stated that he came to know about transfer of the suit property to Sarika Jayant Wagh, Shobha Vishnupant Kokate, Balasaheb Jagannath Jadhav, Santosh Yadav Shevkar, Satish Yadav Shevkar and Chetan Yadav Shevkar

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during cross examination of the plaintiff on dated 08.08.2023. The suit is for declaration and perpetual injunction and now suit property is standing in the name of above-mentioned persons therefore, they are necessary party. In this circumstance, it will be just and proper to allow the plaintiffs to add Sarika Jayant Wagh as plaintiff no.3 and Shobha Vishnupant Kokate, Balasaheb Jagannath Jadhav, Santosh Yadav Shevkar, Satish Yadav Shevkar and Chetan Yadav Shevkar as defendants. So also, the proposed amendment is necessary to enable the court to decide the real question in controversy between the parties. It will not change the nature of suit. At the same time inconvenience caused to defendants may be compensated. In these circumstances the application deserves to be allowed by imposing certain cost. Hence, I pass following order.

ORDER

- 1) The application is at Exh.36 is allowed subject to cost of Rs.1,000/- which is to be paid to the defendants on or before next date.
- 2) The plaintiffs are allowed to amend the plaint accordingly after payment of cost and within 14 days from the date of this order.

Sd/-xxx

Date :- 19/07/2025
Place :- Pimpalgaon (B).

(V. W. Khendad)
2nd Jt.Civil Judicial JuniorDivision
Pimpalgaon (B)