

ORDER BELOW EXH. 24

Ananda V/s Mangesh and others

Read the application and say filed by defendant. Perused record. Heard both the Counsels.

2] This is a suit for declaration and injunction. The application under consideration is filed for amendment in the plaint under Order VI Rule 17 of the Code of Civil Procedure.

3] Case of the plaintiff is that, the suit for declaration of pre-emptory right is filed. On service of summons, defendant No. 1 to 3 sold out the suit property to defendant No. 4. Now, the property stands in the name of defendant No. 4 and therefore, it became necessary to amend the plaint, claim clause and prayer clause of the suit on the point of declaration.

4] Application is resisted by filing say at Exh. 28. It is submitted on behalf of defendant No. 4 that, if the application is allowed, there would be change in the nature of suit, which is not permissible in the eyes of Law. Further it is his contention that, no documentary evidence is filed on record to show, his right, title or interest in the suit property and lastly prayed to reject the application.

5] Case of the plaintiff is that, defendant No. 1 and 2 are his real brother. Defendant No. 3 is their mother. All the defendants were

Regular Civil Suit- 59/2017
(CNR No.MHNS13-000655-2017)

intending to dispose off their ancestral property and therefore, plaintiff is having pre-emptory right to purchase their land. But, defendants are not willing to sale that property to the plaintiff. Hence, the present suit is filed.

6] After service of summons defendants sold out that property to defendant No. 4 and therefore, he was added as defendant No. 4 in the suit. Defendant No. 1 to 3 have executed the Sale Deed in favour of defendant No. 4. Since, the property is already disposed off by way of Sale Deed. It is necessary to amend the plaint for addition of consequential relief that, the Sale Deed executed in between defendant No. 1 to 3 and defendant No. 4 is not binding on the plaintiff.

7] Admittedly, as contended by defendant No. 4 in his say, if the application is allowed, it will change the nature of the suit. But, in my view, the proposed amendment is in consonance with the earlier pleading. Hence, I am inclined to allow the application and in result following order is passed.

ORDER

- 1] Application Exh. 24 is allowed.
- 2] Plaintiff to carry out necessary amendment on or before next date.

Sd/-xxx
(Vijay C. Gawai)
Civil Judge Junior Division,
Pimpalgaon (B.), Tal. Niphad,
Dist. Nashik.

Date : 26/02/2019