



MHNS190000471999

Khalil Ahmad Ismail & Ors
Vs.
Jamir Ahmad Gayas Nasir & Ors

ORDER BELOW EXH.274

The present application has been moved by the plaintiffs under Order 6 Rule 17 of the Civil Procedure Code, 1908 for amendment of plaint.

2. It is submitted on behalf of the plaintiff that the present suit has been filed for partition and separate possession of suit property and for mesne profit. During pendency of the suit for evidence defendant No.1, 2-A to 2-C, 3-A to 3-C, 4 and 5-F in collusion by taking disadvantage of the fact that, the land survey No.3/1 to 3/1 are standing in their name have sold out the land supra out of suit property to third persons. Further, in collusion with the revenue authorities they have mutated the name of third persons and created change in the revenue record of the suit property. Defendants with intend to create technical complications in the suit and to protract the suit has created separate revenue record of survey no.3/1/3/1 ad-measuring 00 H 47.25 R and the record of Survey No.3/1/3/1 to the extent of 3 H 58.19 R plus *pot kharaba* 1 R land.

3. On 19/03/2021 the land out of survey No.3/1/3/1 to the extent of 81 R has been sold by the defendants by way of registration No.1153/2021 for the consideration of Rs.1,36,65,000/-(Rs. One Crore Thirty Six Lakhs and Sixty Five Thousand only) to third person by name Jabar Rajjak Shaikh, Shaikh Sharekh Dastgir and Changdev Dada Lonare. The said transaction has took place during pendency of the lis. In such circumstances the third person supra has to be made as defendants in the present suit. They are the necessary parties. The sale-deed executed in their favour is illegal and not binding upon

the plaintiffs. As such, plaintiffs have to seek the prayer in that regard. Therefore, requested to allow the application by permitting plaintiff to amend the plaint and implead the purchasers of suit property by name 1. Jabbar Rajjak Shaikh, 2. Shaikh Sharekh Dastgir and 3. Changdev Dada Lonare as defendants. Further, wants to amend paragraph No.9 by inserting paragraph No.9-AA adding prayer of declaration that the said sale-deed is not binding upon the share of the plaintiffs.

4. Defendants by filing say below Exh.279 have objected the application. It is submitted that, the contents of the application are false and incorrect. The application is not fit in the four corners of the provisions of Civil Procedure Code, thus it is not maintainable. Plaintiff wants to add the purchaser of the suit property as a necessary party and seeking relief of declaration that the sale-deed executed in their favour is not binding upon the share of the plaintiff. The proposed amendment is vague in nature. The consideration amount of aforesaid sale-deed is above the pecuniary jurisdiction of this court, therefore the application is not maintainable. The application is nothing but misuse of process of law. Application like nature previously has been moved by the plaintiff however it has been rejected. No any appeal against the said order has been preferred before the Hon'ble Higher Courts. As such, the present application is not tenable in the eyes of law. Thus requested to reject the same.

5. After going through the reviles submission of the parties following points are arise for my determination and I have given findings by recording reasons thereon-

Sr.No.	POINTS	FINDINGS
1.	Whether proposed amendment will change nature of the suit?	No.
2.	Whether proposed amendment is necessary to	

decide real question in controversy between the parties.?

Yes.

3. What order.?

As per final order

REASONS

AS TO POINT NO.1 & 2 :-

6. By way of present application, the plaintiff has sought amendment for the purpose of bringing subsequent fact on record. Plaintiff by way of the present suit sought relief of partition, separate possession and mesne profit of the suit property. During pendency of the suit defendant .1, 2-A to 2-C, 3-A to 3-C, 4 and 5-F have alienated the suit property to third person by way of registered sale-deed. By way of present application plaintiff wants to implead them as a party to the suit. Further, he wants to challenge the sale-deed supra by way of adding further prayer in the prayer clause.

7. The purpose of Rule 17 of Order 6 of Civil Procedure Code, 1908, is to make all endeavors to avoid multiplicity of the proceedings and protraction of trial. Further the intention of legislature in framing Rule 17 of Order 6 is to encompass the subsequent events, if they can be connected to the original cause of action and to permit the amendment of pleadings for effective adjudication of all controversial issues in the trial of same litigation. The proposed amendment could not be disassociated from the original plaint. In the case in hand the amendment sought by the plaintiff is connected to the original cause of action in the suit. Though the alleged transaction is subject to principal of *lis pendence* as provided under Section 52 of the Transfer of Property Act, however, the suit is for partition and yet the shares of respective holders have to be adjudicated. Plaintiffs by way of proposed amendment wants to seek and challenge the alleged sale-deed as such, the purchasers of the suit property are the necessary parties to the suit. Even otherwise for the sake of argument it is considered that the effective decree can be passed and

complete adjudication of issues can be made in absence of the proposed purchaser, however at the same time it has to be considered that the purchasers are the persons whose presence would enable the court completely, effectively and properly adjudicate upon all matters and issues in the suit, though, they may not be a person in favour of or against whom a decree is to be made. As such, the purchasers are necessary as well as proper parties to the suit. The application has been moved by the plaintiff is within reasonable time of his acquiring knowledge of the said transaction. Thus, the proposed amendment sought by the plaintiff is necessary for the complete adjudication of the suit and would not change the nature of the suit. Thus, I answer point No.1 in negative and point No.2 in affirmative.

AS TO POINT NO.3 :-

8. After considering the negative finding as to point No.1 and affirmative finding as to point No.2, I am inclined to allow the application and in answer to point No.3 passed the following order-

ORDER

1. Application is hereby allowed.
2. The plaintiffs shall carry out the proposed amendment and implead the purchasers by name 1. Jabbar Rajjak Shaikh, 2. Shaikh Sharekh Dastgir and 3. Changdev Dada Lonare as defendants and amend paragraph No.9 of the plaint by inserting paragraph No.9-AA in view of application Exh.274.
3. The plaintiffs shall carry out amendment within fourteen days from today and he shall supply the amended plaint accordingly.

Dated :- 13/07/2022

Place :- Yeola

(A. S. Kambale)
Jt. Civil Judge Junior Division,
Yeola, Dist. Nashik.