

Order below Exh.42

1. Suit is for partition, declaration and injunction. During pendency of suit defendant No.7 sold some of the suit-property to third party Bhanudas Suryabhan Ushir. Plaintiff wishes to add the said third person as defendant no.9. Plaintiff also desires to add corresponding contents in the body of plaint and prayer clause regarding illegality of the said sale-deed by which defendant no.7 sold suit property to proposed defendant no.9. Additional prayer of right of pre-emption is also sought to be added.

2. Notice was issued to the proposed party. Proposed defendant no.9 Bhanudas appeared through advocate vide Exh.45. He has filed say upon this application vide Exh.48. He has admitted purchasing portion of suit-property. He has claimed that he is bona fide purchaser with value and without notice. He has further claimed that plaintiff is not entitled to proposed amendment and so, application be rejected.

3. Heard rival counsels. Perused record.

4. Considering rival contentions of parties following points arise for my determination:-

<u>Points</u>	<u>Findings</u>
1. Whether the proposed amendment is necessary to determine real question in controversy between the parties? Yes
2. What order? As per Final Order

REASONS

As to point no.1 :-

5. It is admitted position that sale of property has taken place during pendency of the suit. Plaintiff is not responsible for this act. Considering nature of the suit, plaintiff stands entitled to seek declaration in respect of the said sale-deed. Whether or not plaintiff is entitled to right of pre-emption is an aspect of final adjudication. At this stage, plaintiff cannot be deprived of his right to carry out amendment. Proposed amendment is necessary and complementary to the already sought reliefs. Accordingly, point no.1 is answered in the affirmative.

As to point no.2 :-

6. In view of above finding, following order is passed.

O R D E R

- A. Application is hereby allowed.
- B. Plaintiff is hereby allowed to carry out the proposed amendment in the plaint.
- C. Plaintiff shall carry out proposed amendment within fourteen days of this order.

Yeola, Dist.Nashik,
Date : 18/12/2015

(Sau. A.R. Rahane)
Civil Judge, J.D., Yeola.