

Order below Exh.52 in R.C.S. No.147/2014
(Kaushabai Vs. Rakhma and Ors.)

Read the application and say filed on it. Heard the learned counsel for both sides. The suit is for declaration of ownership and permanent injunction. It is seen that, during the pendency of the suit, the defendants sold out the suit property to Sunita Sudhir Kurne, Ravindra Sukdeo Kurne, and Usha Sitaram Kurne vide sale deed dated 02.02.2017 without the permission of the court. According to the plaintiffs, the said sale deed is without consideration and hallow one. It is hit by the lis pendence, and not binding upon them. Therefore, the plaintiffs sought to challenge the said sale deed by raising necessary pleas, joining the purchasers thereof, and seeking necessary relief as to illegality of it by amending the plaint. The proposed amendment relates to the suit property. It has definite bearing on the rights of the plaintiffs to be adjudicated in the suit. The amendment necessitated in view of pendente lite alienation of the suit property. Hence, the proposed amendment does not change the nature of the suit, and rather it is essential for the just decision of the suit. The plaintiffs need to be given requisite opportunity to avoid multiplicity of the proceeding. Whether there is merit in the pleas sought to be raised by way of amendment, or not, could be gone into after such pleas are incorporated in the plaint, and not at the stage of deciding amendment application. The defence would be entitled to contest the amended pleas by filing appropriate written statement, and would not suffer any prejudice. Even the question of valuation payment of court fee could be considered after amendment of the pleading and not while deciding amendment application. Hence, the amendment being essential for just decision of the suit, liable to be allowed, and it be carried out in the plaint on or before next date with submission of the necessary copies of the amended plaint.

Sd/-xxx

(M. M. Gadiya)

Civil Judge, Sr. Div., Sinnar.

Date :- 25.09.2023.