

Order below Exh.38 in R.C.S. No. 219/2015
(Nivrutti Vs. Mahesh and Ors.)

Read the application and say filed on it. Heard the learned counsel for both sides. It is suit for declaration of ownership, permanent injunction, and incidental reliefs thereto. It is seen that, during the pendency of the suit, defendant No.5 sold out the suit land to one Meena Ashok Bodake without the permission of the court vide a registered sale deed dated 21.03.2017. Therefore, the plaintiff sought to amend the plaint to challenge the said sale deed by adding the said purchaser as defendant with necessary pleas and relief to that effect. It is seen that, the defendants sought the rejection of the plaint, but it is well settled that, while the applications for rejection of plaint, and amendment of the plaint being pending, the court shall have to first decide the amendment application and get settled the pleadings. If we consider the say filed by the defendants, none of them raised objection on the basis of the said contention. One of the objection raised is that, the plaintiff did not pay requisite stamp duty on the sale deed sought to be challenged by way of amendment. Non payment of stamp duty on a sale deed to be challenged by way of amendment, could be considered after allowing the amendment, and it be carried out in the plaint, and it could not be considered while deciding the amendment application. Defendant Nos.1 to 4 could raised such objection after the amendment being carried out in the plaint. The proposed amendment does not change the basic nature of the suit, and rather appears to be necessary for determining all the questions of controversy with regard to the suit property.

The plaintiff need to be given opportunity to put-forth his case, and it would advance the justice. The defence would not suffer any prejudice by allowing such amendment as it would be entitled to file appropriate defence to the amended pleas. Hence, the proposed amendment is liable to be allowed, and accordingly allowed. Accordingly, the proposed amendment be carried out 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 :- 08.08.2023.