

Kusumbai Panchal Vs. Bhagwan Dhakarge.**ORDER BELOW EXH.26**

The present application has been filed by the applicant under Order 1 Rule 10 & Order 6 Rule 17 of the Code of Civil Procedure.

02. By way of this application, the plaintiff submitted that, the the present suit is instituted for reconveyance of sale deed and perpetual injunction. The defendant has executed the sale deed in respect of suit property in favour of Uttam Baburao Athwale and has created third part interest in the suit property. The third party Uttam Athwale is obstructing the possession of the plaintiff on the basis of the aforesaid sale deed. Uttam Athwale has no interest, right or title in the suit property but only on the basis of the aforesaid sale deed is trying to dispossess the plaintiff. Therefore, it is necessary to add Uttam Athwale as defendant No.2 in the present matter. Further, the plaintiff also wants to amend the prayer clause and the claim clause by inserting para No.1-A, 10 A, 11 A in the plaint. For the aforesaid reasons it is prayed that, the application be allowed.

03. The defendant opposed the present application and submitted that, the sale deed in favour of Uttam Athwale was executed before the institution of the present suit and the plaintiff had full knowledge about the same. Hence, the application is not tenable and therefore, be rejected.

04. Perused the application and say. Following points arise for my determination for which I have given my findings for the reasons mentioned below.

Points	Findings
1. Whether the amendment sought by the applicant is necessary to determine real question in controversy between the parties ?	Yes.
2. What Order ?	As per final order.

AS TO POINT No.1:-

05. It must be noted that, the present suit has been instituted for reconveyance of sale deed and perpetual injunction. It is the specific contention of the plaintiff that, he is the lawful owner and possessor of 80 R land situated in gut No.156 at village Girgaon Tq. Sailu. The aforesaid land property is the suit property in the present matter. The plaintiff has placed on record sale deed No.2334/2021 by which the defendant Bhagwan Ashroba Dhakarge has sold out the suit property to person name Uttam Baburao Athwale.

06. By way of amendment of the plaint, the plaintiff intends to add Uttam Athwale as defendant No.2. Further, the paragraph No.1A, 10A & 11A which the plaintiff intends to insert in the plaint are with respect to the relief of declaring the alleged sale deed No.2334/2021 as null & void and not binding upon him. In my opinion, as the plaintiff is specifically seeking relief with respect to the suit property and the said suit property has been allegedly sold out by the defendant to Uttam Baburao Athwale, the person name Uttam Baburao Athwale is the necessary party in the present suit and therefore, is necessary to be added as defendant No.2 in the present matter. Adding the Uttam Athwale as the defendant No.2 will not cause any prejudice to the plaintiff. On the other hand, it would help in deciding the matter on

merit. Moreover, the aforesaid amendment in noway changes the nature of the suit. In the light of above discussion, I answer point No.1 in the affirmative and as to point No.2, I proceed to pass following order.

ORDER

01. Application (Exh.No. 26) is allowed.
02. The plaintiff is directed to add Uttam Baburao Athwale, age 34 years, R/o Rajivgandhi nagar, Sailu as defendant No.2 and also to add para No.1A,10A & 11A in the plaint and to make necessary amendments within two weeks from the date of this order.

Date : 23.07.2024

(Mandar M. Raut)
Jt. Civil Judge Junior Division,
Sailu Dist. Parbhani.