

Madhav Wagh Vs. Dnyanoba Wagh & Ors.

ORDER BELOW EXH.21

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

02. By way of this application, the plaintiff submitted that, defendant No.3 on 03.11.2021 by executing sale deed No. 3068/2021 has sold suit property to Dagduram Bapurao Thombare. Therefore, it is his contention that, Dagduram Bapurao Thombare has become necessary party to this suit and therefore, his name is necessary to be added in the plaint and temporary injunction application. Further, the Ld. advocate of the plaintiff submitted that, as the defendant No.3 sold the suit property during the pendency of the suit the sale deed No. 3068/2021 is not binding upon him. Therefore, amendment is necessary to be made in the para No. 13 of the plaint, para No. 19 of the temporary injunction application, para No. 4 of the prayer clause and para No.2 in the relief clause. For the aforesaid reasons he prayed that, the name of Dagduram Bapurao Thombare be added as defendant No.4 and the above mentioned amendments be allowed.

03. The application was strongly opposed by the Ld. Advocate of the defendant by filling his say on the overleaf of the application. He submitted that, simply adding the name in the column of defendant is not sufficient. It is necessary to change claim and prayer clause and if said amendment is allowed, the nature of the suit is going to change. Therefore, he prayed that, the application be allowed.

04. Perused the application and say. Heard both sides. 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 plaintiff 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. In order to decide the present application, it is necessary to determine that, whether the amendments sought by the plaintiff are necessary to be made to decide real questions in controversy between the parties. Present suit has been instituted for declaration of ownership and possession and perpetual injunction. It must be noted that, it is the specific contention of the plaintiff that, defendant No.3 has sold the suit property to Dagduram Bapurao Thombare. In support of his application he has filed on record copy of sale deed No. 3068/2021. On perusal of the said copy it reveals that, defendant No.3 has sold the suit property to Dagduram Bapurao Thombare. The suit property mentioned in the plaint is the same property in respect of which sale deed No. 3068/2021 has been executed. Certainly, I find merit in the contention of the plaintiff that, as the suit property is sold to Dagduram Bapurao Thombare during pendency of this suit, Dagduram Bapurao Thombare has become necessary party. Therefore, under Order 1 Rule 10 the name of Dagduram Bapurao Thombare is necessary to be added as defendant No.4 in the present suit.

06. Moreover, the plaintiff has also prayed that, the sale deed No. 3068/2021 is not binding upon him and therefore necessary amendment be made in the prayer clause, in the plaint, in the

temporary injunction application and in the relief clause. As the suit property has been sold by the defendant No.3 during the pendency of the suit, the prayer of the plaintiff that, the said sale deed be declared as void and not binding upon him seems to be correct and accordingly the amendment made in the plaint, temporary injunction application, prayer clause and relief clause is certainly necessary to determine the real question in controversy between the parties.

07. The amendments as prayed by the plaintiff would not change the nature of the suit. On the contrary the said amendment is necessary to bring on record all the necessary parties and to decide the real question in controversy between the parties. Therefore, application needs to be allowed. Further, considering that, the trial is yet not commenced, the present application of the plaintiff needs to be allowed in the interest of justice and in order to arrive at just decision. 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

1. Application (Exh.No. 21) is allowed.
2. The plaintiff is directed to add Dagduram Bapurao Thombare as a party to the suit i.e. defendant No.4 and to make necessary amendments within two weeks from the date of this order.

Date : 15.11.2022

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