



R.C.S. NO.229/2022
Shamal Bhagwan Tavhare
Vs
Sitaram urf Dilip Gabaji Bagal

ORDER BELOW EXH. 44

This is suit for the partition and permanent injunction. The plaintiff through the present application under Order VI Rule 17 of the Code of Civil Procedure (C.P.C. for short) is seeking relief of amendment in the plaint.

2. The plaintiff has submitted that defendant No.2 unauthorisedly executed sale deed bearing No.169/2011 for some portion of suit property admesuring 0 H 01 R in his favour Mr. Rajaram Sabaji Bagal and further in connivance with him sold the same portion of the suit property to Kavita Arun Bagal by executing the sale deed bearing No.2707/2015. The plaintiff also submitted that as she was not a party in both the sale deeds, she recently came to know about it and therefore, she has moved the present application.

3. In addition to above She has submitted that she is diabetic patient and suffering from other disease and therefore she was residing at Mumbai with her daughter. After recovering from said disease she obtained aforesaid documents and approached her advocate and filed this application for amendment in pleading.

4. The Ld. advocate for the defendants opposed the present application by filing their overleaf. He submitted that the present application is false and frivolous. The present suit is barred by limitation. There is no cause of action to file amendment application. He further submitted that if the application is allowed it will change the nature of the suit. Hence, prayed to reject the application.

5. On careful perusal of Order VI Rule 17 of C.P.C. it appears that the object of the said provision is to facilitate the court to allow the amendments which are necessary for determining the real question in controversy between the parties provided that it would not cause injustice or prejudice to the other side.

6. Perused the application and record. The present application filed by the plaintiff is supported by an affidavit at Exh.45. It is seem that the reason behind present application is change of circumstances during the pendency of the suit. It is pertinent to note that defendants nowhere in their say has denied execution of the sale deed. The present suit is for partition, declaration and permanent injunction.

7. After a judicious evaluation of the facts and circumstances in which the amendment is sought, I am of the opinion that the amendment subserves the ultimate cause of justice and avoids further litigation. The suit is for the partition, and the name of the proposed defendant being a necessary party to the suit is essential to elucidate the real question in the controversy between the parties. Further, no prejudice will be caused to the defendants if the present application is allowed and permission is granted for an amendment. The proposed amendment will not change the nature of the suit. Moreover, if the present application is allowed then it would not take away the right accrued to the defendants and they will have all right to defend their case.

8. Further keeping in mind, that the issues have not been framed, and for avoidable expenses that had to be incurred by the defendants for opposing the amendment, I am of the opinion to impose a cost on the plaintiff. Therefore, considering the nature of the amendment and in view of the reasons discussed above, I am inclined to allow the present application and grant permission for amendment as sought. Accordingly, I pass the

following order.

ORDER

1. Application at Exh.44 is allowed subject to cost of Rs.500/- be paid to defendants.
2. The plaintiff is directed to carry out the amendment as mentioned in paragraph No.6 (1) to 6 (5) in his application within 14 days from the date of this order and furnish the amended copy to the defendants accordingly.
3. Both parties are to take note of this order.

Dt.16/07/2024

(Sagar S. Mohite)
2nd Jt. C. J. J. D., Ghodegaon
Dist. Pune.

C E R T I F I C A T E

I affirm that the contents of this P.D.F. file are the same word for word as per the original.

Name of the Court	: Shri. Sagar. S. Mohite, 2 nd Jt. C.J.J.D. and J.M.F.C., Ghodegaon, Dist. Pune.
Name of the Steno	: J. S. Kaite, Steno Grade - III.
Judgment date	: 16/07/2024.
Judgment signed by P.O. on	: 16/07/2024.
Judgment uploaded on	: 16/07/2024.