

::ORDER PASSED BELOW EXH.44 IN R.C.S.No.14/2017::

Bhagwan Bhudhaji Bhoir & Ors.

...Plaintiffs

V/s.

Tarabai Valku Bhoir & Ors.

...Defendants

This is an application filed on behalf of plaintiffs under *Order I Rule 10 and under Order VI Rule 17* of the Code of Civil Procedure for addition of parties and amendment in the plaint.

02. The grounds mentioned in the application are that, the present suit is filed for partition of the suit properties and for cancellation of the sale deed dated 08/10/2003 executed by defendant nos.1 and 2 in favour of defendant no.3, and for declaration that, sale deed dated 20/03/2013 executed by defendant no.3 in favour of defendant nos.4 and 5 is not binding on the share of plaintiffs. They have also sought the relief of perpetual injunction. There are 12 suit properties out of which the property mentioned at Sr.no.3 i.e. Survey no.3/2D is mistakenly shown with area of 0H-69R-80P. However, its actual area is 0H-72R-60P. The said mistake being a typing mistake, plaintiffs wish to correct it through this application. At the same time, the property mentioned at Sr.no.3 is also sold on 30/01/2009 by defendant nos.1 and

2 in favour of Shri. Ashok Chaganlal Thakkar, R/o.Mulund(W.), Mumbai. This sale deed is also remained to be challenged inadvertently. Likewise, Shri.Ashok Chaganlal Thakkar thereafter executed sale deed dated 19/04/2011 of the same property in favour of Paranomic Land Developers Ltd. through Amol Manohar Tipnis. This sale deed is also remained to be challenged inadvertently. Plaintiffs have added the property mentioned at Sr.No.3 amongst the suit properties but inadvertently and due to oversight these sale deeds being in respect of the said property are not challenged. These sale deeds are illegal and not binding on plaintiffs. A relief of declaration in that regard needs to be sought. If the amendment is not allowed, plaintiffs shall suffer irreparable loss. Nature of the suit is not going to be changed if the application is allowed. The sought amendment and addition of parties is necessary to avoid further legal complications. Plaintiffs therefore have filed present application for amendment in the plaint and addition of parties in this suit.

02. The application is resisted by defendant no.3 by filing his say below Exh.50 and also by defendant nos.4 and 5 by filing their say below Exh.51. The application is proceeded with say of defendant nos.1 and 2. These defendants have resisted the application on the grounds

that, the application of plaintiffs is filed on false grounds. It is beyond the period of limitation and without any cause of action. Such kind of application is not tenable in the eyes of law because nature of the suit will be completely changed. They therefore have prayed for dismissal of the present application.

03. Heard learned advocates, perused the record. It is submitted on behalf of defendants that, this is not a stage to file the present kind of application. Such application is not warranted in the eyes of law. However on perusal of the plaint it can be seen that, the suit is filed for partition by metes and bounds and also for cancellation of two sale deeds dated 08/10/2003 and 20/03/2003. These sale deeds are in respect of properties mentioned at Sr.No.5 to 12 amongst the suit properties. Plaintiffs having added the property mentioned at Sr.no.3 are also entitled to claim reliefs in respect of the said property. No nature of the suit shall be changed if the sought amendment is allowed and names of the proposed defendants are added as defendants in the present suit. Even if, plaintiffs want to add coparcners in the suit properties at be lated stage, those being necessary parties, it is always just to add them amongst defendants. Otherwise it would be futile exercise to conduct the trial further. Hence I am of the opinion that,

plaintiffs are entitled to add mentioned parties as defendants in the present suit and for amendment in the plaint. Hence the order.

:: ORDER ::

1. The application is allowed.
2. Plaintiffs shall correct the area of the property mentioned at Sr.no.3 amongst the suit properties.
2. Mentioned parties in the application be added as defendants in the present suit. Plaintiffs to take steps against them.
3. Plaintiffs to carry out the amendment within 14 days from the date of this order.

Sd/-

(Manod V. Tokale)

Karjat

Date:12/11/2019

Civil Judge Junior Division, Karjat.