

**R.C.S.NO.17/2014**

Bhaurao Patil V/s  
Krishna Patil

**Order below Exh.34**

((1)) Suit is for perpetual injunction and declaration that, will deed dated 26/03/1999 is illegal and not binding. Present application is filed by plaintiff for amendment in the plaint. Plaintiff avers that, defendant executed registered sale deed dated 17/03/2007 in favour of Divesh Mahendra Sanghavi. The plaintiff obtained its copy from Sub Registrar Office, Karjat on 15/03/2016. The said transaction was carried out by his power of attorney holder Bhagoji Sahadev Malap. Thus, it is necessary to implead both of them as defendants Nos. 2 and 3 in the present his. Permission to amend corresponding contents in the plaint para A/1 be allowed.

((2)) Defendant field his say **(Exh.38)**. It is contended that, sale deed dated 17/03/2007 was executed prior to the filling of suit. It was well within the knowledge of the plaintiff right from the beginning. This application will change the

nature of the suit. It is filed at very late stage. It may be rejected.

((3)) Heard rival counsels and perused records.

((4)) Considering rival contentions of the parties.

Following points arise for my determination and I have recored my findings against them.

| <b>Sr.No.</b> | <b>Points</b>                                                                                                    | <b>Findings</b>            |
|---------------|------------------------------------------------------------------------------------------------------------------|----------------------------|
| 1.            | Whether proposed amendment is necessary for determination relating question in controversy between the parties ? | <b>Yes.</b>                |
| 2.            | What order ?                                                                                                     | <b>As per final order.</b> |

### **REASONS**

#### **AS TO POINT NO 1**

((5)) Admittedly sale deed dated 17/03/2007 is executed before the filing of the suit. It is important to understand that, plaintiff acquired its knowledge on 15/03/2016. Perusal of written statement (**Exh.32**) para 13 reveals that, defendants had sold suit property to third party. This suggests that,

contentions of the plaintiff are in harmony with his application. The trial has not commenced. Therefore, present application is not barred by Order 6 Rule 17 proviso.

((6)) As per Order 1 Rule 10 necessary party is the one without whom no order can be made effective. In view of my above discussion 'Devesh Mahendra Sanghavi' and 'Bhagoji Sadev Malav' are necessary parties. Hence, their presence is necessary for effective adjudication of the dispute. Therefore, the said amendment is just and necessary. In order to prevent further multiplicity of proceedings, chaos and confusion, this application deserves to be allowed. **“Hence I answer point No 1 in affirmative.”**

### **AS TO POINT NO 2**

((7)) in view of my above findings. I pass the following order.

### **ORDER**

- 1) Application (Exh.34) is allowed.
- 2) Plaintiff to amend the plaint by adding proposed defendants No.2 and 3.

- 3) Plaintiff to carry out proposed amendment within 15 days from the date of order.

**Sd/-**

**Place : Khalapur.**

**(S.A.R.Sayed)**

**Date : 19/04/2017**

**Jt.Civil Judge, J.D. Khalapur.**