

ORDER PASSED BELOW APPLICATION EXH. NO.45

(Passed on this 07th Day of February , 2018)

01. Plaintiffs made this application on affidavit under Order VI Rule XVII of Civil Procedure Code, 1908 for amendment of plaint and for addition of defendant No.07 and 08. Perused the application and Say filed by defendants. Heard Ld. Adv. Mr. P. G. Musale for plaintiff and Ld. Adv. Mr. R. B. Sawant for defendants.

02. Plaintiffs contended that, they filed suit for partition. Defendants sold out property mentioned at Sr.no. 01 in para no.01 of the plaint i.e. Gat No. 192 ad-measuring 0-52-06 H-R by registered Sale Deed to one Kiran Maruti Gajre on 28-04-2015. The said sale deed bears the name of Smt. Tejaswini Uday Jadhav as a transferor. Hence, plaintiffs wants to array said transferor Smt. Tejaswini Uday Jadhav as defendant No.07 and transferee Shri. Kiran Maruti Gajre as defendant no.08 and claim relief of declaration that Sale Deed is not binding on them. Therefore, plaintiffs sought permission to amendment of plaint by inserting title clause and paragraph 4A, 8A and 10)(1) (a) and addition of name of Tejaswini in a family tree provided in Para 02.

03. Defendants strongly opposed the application. It is contended that the plaintiff has knowledge alleged sale deed. The plaintiff has to institute the suit after taking all relevant information. The application for amendment is moved after Three year from the date of suit. The plaintiff is negligent. Hence, he prayed to reject the application.

04. Perused record. Considered submissions of both sides. If nature of amendment application is taken into consideration, then it is manifest that amendment is regarding alienation of suit property.

05. Learned Adv. Mr. P. G. Musale for plaintiffs argued that, the amendment is necessary for the just decision of the case. It will not alter the nature of suit. Hence, prayed to allow the application.

06. Ld. Adv. R. B. Sawant for defendants argued that amendment is belated and false. Plaintiffs are not diligent. The application is moved after three year from the date of suit. The plaintiff have knowledge of the alleged sale deed. Plaintiff are negligent. Hence, prayed for rejection of the application.

07. Perused the record of the case. In the matter in hand trial is not yet commenced. Therefore, for deciding real controversy between parties once for all amendment application needs to be allowed. The proposed amendment, in my opinion is nothing but a better clarification to the pleadings. It will not change the nature of the suit or cause any prejudice to the present defendants. Thus, I find that, the proposed defendants are necessary and proper party to the suit. The proposed amendment would avoid multiplicity of proceedings and would facilitate the complete adjudication of the matter. Hence, without going into the merits of the suit I find that, the proposed amendment is permissible in the interest of the aforesaid observation. However, I find gross delay and negligence on part of the plaintiff to seek the relief and hence he is required to be saddled with appropriate cost, in result following order is passed :

3 R. C. S. No.05/2015
Puspa Watve + 3 Vs. Vijay Watve + 6
C.N.R.No. MH RG 09-000073-2015

ORDER

1. The application is allowed, subject to cost of Rs. 3,000/-. Out of the cost amount Rs. 2,000/- be given to the appearing defendants. The balance amount of Rs. 1,000/- be credited to the government.
2. Accordingly the plaintiff is permitted to carry out the proposed amendment as prayed, within prescribed time.
3. The plaintiff is also directed to provide the amended plaint and copy thereof, on or before next date.
4. Failure to comply with any of condition aforesaid shall render further proper order.

Sd/-

Date : 07/02/2018

(C. U. Shipkule)

Place: Roha

Jt. Civil Judge Jr. Division, Roha.

MH-RG-0009-2804