



Reg. Civil Appeal No.7 of 2021.
Ramdas Bhaguram Pawar Vs.
Sahdev Mahadev Dhamal
CNR No.MHRG150002222021

Order Passed Below Exh.21 and Exh.23

Appellants/Plaintiffs has filed application(Exh.21) for amendment of appeal memo and original suit. Consequently, application(Exh.23) is filed for adding parties in appeal memo and original suit. Appellants/Plaintiffs contended that, they had filed present appeal against Judgement and Decree passed by Ld. Civil Judge Junior Division, Mangaon, on 27.10.2016 in R.C.S. No.147/2012. During pendency of appeal Respondent executed Conveyance deed on 14.08.2019 in favour of Nitin Kaluram Dhamale, Sachin Kaluram Dhamale and Sagar Kaluram Dhamale in respect of Suit Property. In respect of which mutation entry no.378 was certified and name of said persons was entered in the 7/12 extract of the suit property. As conveyance deed executed during pendency of appeal, said person not get any rights in Suit Property because said sale deed is hit by provisions of section 52 of Transfer of Property Act, 1882, (in short "T.P. Act"). Hence, seek permission to amend the appeal memo and original suit. Consequential relief of adding said purchaser as party respondent in appeal memo and as defendant in original suit.

2) Ld. Advocate Shri. Mohan Metha submitted that, Judgment and Decree was passed on 27.10.2016. However,

application for condonation of delay was filed on 04.08.2017. During pendency of delay condonation application sale deed in respect of suit property was executed on 14.08.2019. The delay condonation was allowed on 15.03.2021. Therefore, sale deed is hit by principle of lis pendens. In support of their contention relied on following judgments.

(I) Manik S/o. Motiram Dalwale Died Through L.Rs. & Ors. Vs. Suhas Vasantrao Jawadekar & Ors., decided by of the Hon'ble Bombay High Court, Bench at Aurangabad, in Appeal from Order No.55/2021. Wherein it is held that, preferring an appeal with delay condonation application is lis pendens.

(II) Moreshwar Yadaora Mahajan Vs. Vyankatesh Sitaram Bhedi (D) Thr. LRS & Others, 2022 LiveLaw(SC) 802. The said judgment is on impleadment of necessary parties.

(III) Dinesh Goyal @ Pappu Vs. Suman Agarwal (Bindal) & Ors., Spl. Leave Petition (Civil) No.30324/2019. Wherein, the Hon'ble Supreme Court held that, if amendment is necessary in order to decide real question of controversy then it should be allowed.

(IV) Nitin Gandhi & Anr. Vs. Dinyar Pheroz Dubash & Ors., Appeal No.42 of 2014. Wherein, the Hon'ble Bombay High Court allowed impleadment of subsequent purchaser as party to the suit.

3) Respondent/Defendant filed his say(Exh.25) and strongly opposed said application. Respondent contended that, the original suit was dismissed and counter claim of the Respondent/Defendant was decreed on 27.10.2016. Thereby, declared sale deed dt. 18.09.2010 and 24.09.2010 as void and not binding on Respondent/Defendant. In respect of said judgment and decree mutation entry no. 323 was certified on 27.07.2017. An appeal against said judgment and Decree was preferred after five years. Till 2021, said judgment and decree was not stayed by any Court. Appellants/Plaintiffs were aware about fact of removal of their name from 7/12 extract of Suit Property. Thereafter, Respondent/Defendant sold suit property to his nephew by sale deed dt.14.08.2019 and in respect of it, mutation entry was certified. Appellant/Plaintiff was aware about all this fact from 2017 to 2019, but only after filing of Paper book with view to delay the appeal, amendment application has been filed. Thus, prayed for rejection of application. In support of his contention relied on judgment. *(I) (Mt.) Haliman and another Vs. Nur Muhammad Khan, 1923 Lahore 490*. Wherein, the Hon'ble Lahore High Court held that, an appellate court has power to implead only such person as parties who are parties to original suit, but not to those who were complete strangers to the suit. The said judgment is not applicable to the present appeal, because in this case proposed respondents have purchased suit property from defendant. So they are not strangers to the lis.

4) Heard both the sides. Perused application and say, following point arisen for my determination and my finding thereon as under.

Sr. No.	Points	Findings
1.	Whether amendment and adding of party is necessary for purpose of determining the real question in controversy between the parties ?	Yes.
2.	What order?	Partly allowed.

REASONS

5) It is undisputed fact that, suit property is transferred by Respondent/Defendant to his nephew. Though, sale deed was executed after appeal period is over, purchaser steps into the shoes of Respondent/Defendant. Likewise, though decree was not stayed by any Court, sale deed was executed during pendency of delay condonation application. Ld. Advocate for Appellant/Plaintiff relied on judgment of the Hon'ble Bombay High Court at Aurangabad Bench in **Manik S/o. Motiram Dalwale died through L.Rs Versus Suhas Vasantrao Jawadekar and ors. in Appeal from order no.55/2011** held that, preferring an appeal with delay condonation application is lis pendens.

6) An execution of sale deed in respect of suit property during lis pendens is a subsequent event. The said subsequent

event has fundamental impact on relief claimed. The Court has discretion to permit amendment at any stage of the proceedings, if it is necessary for determining real question in controversy. The said subsequent event needs to be taken on record, in order to avoid multiplicity of proceedings and for just decision of the appeal. By this amendment no prejudice would be cause to the Respondent/Defendant because he had transfer his interest to the purchasers. Likewise, it would not prejudice to the purchaser as they have acquired interest in the suit property. Thus, both would get opportunity to put their case.

7) The original suit was filed for permanent injunction, wherein Respondent/Defendant has filed counter-claim and sought declaration in respect of sale deed as void and not binding on defendant. The Plaintiff had defended said counter claim by filing written statement. The said counter claim was decreed and sale deed in favour of Plaintiffs were declared void and not binding on Defendant and during pendency of appeal suit property was sold. The said subsequent event is necessary to be taken on record as it created impact on relief claimed. Plaintiff has challenged said judgment and decree by filing appeal. Thus, amendment will not change nature of suit.

8) As permission to amend appeal memo is given to the Appellants/plaintiffs, adding of parties is consequential relief thereto. Appeal is continuation of suit, so no need to make simultaneous amendment in the suit. Hence, I proceed to pass following Order.

ORDER

- 1) The application for amendment(Exh.21) and application for adding of party(Exh.23) are partly allowed.
- 2) Appellants are permitted to carry out amendment and add parties only in appeal memo as prayed and file amended appeal memo within 14 days.
- 3) Permission to amend and add parties in original suit is rejected.
- 4) Cost in cause.

Mangaon.
Date: 19.11.2025.

Sd/-
(M. K. Patil)
District Judge-2, Mangaon.