



CNR NO. MHSI70005262019
Order passed below Exh. No.33
(I.A. No.5/2024) in R.C.S. No. 96/2019

This is an application preferred by the plaintiffs under Order 1 Rule 10 r.w. Order 6 Rule 17 of the Code of Civil Procedure.

2. The plaintiffs have contended that plaintiffs have filed the present suit for declaration and perpetual injunction. At the time of filing of suit, name of the defendant no.1 only mentioned in the 7/12 extract of the suit property. Therefore, the plaintiffs have made a party to the defendant no.1. The defendant no.1 has filed written statement and contended that he had gifted the suit property to her daughter namely Akshata Arun Ghadigaonkar before her marriage known as Sangita Vitthal Ghadi by registered gift deed no.80/2019. Therefore, she is necessary party to the suit. Therefore, prayed to implead her as a defendant no.3 and allow to plaintiffs to carry out consequential amendments as per para no.2 to 7 of the application.

3. The defendant no.1 has resisted the application by filing say at Exh.34. It is contended that at this stage, plaintiffs cannot seek amendment. The plaintiffs were aware the aforesaid facts at the time of filing of suit. However, the plaintiffs deliberately have not stated the said fact in the plaint. Therefore, prayed to reject the application.

4. Heard, both sides. Both sides have reiterated the contentions raised in the application and say. The plaintiffs have sought declaration and challenged the sale deed executed in

favour of defendant no.1. On the basis of said sale deed the defendant no.1 had transferred the suit property in favour of proposed defendant no.3 by executing gift deed in her favour. Therefore, the proposed defendant no.3 is a necessary party of the suit and her presence is required to completely adjudicate the controversy between the parties. Moreover, the proposed amendment is not inconsistent with the earlier pleadings of plaintiffs. It will not change nature of the suit. Moreover, the present application is preferred when the matter is posted for the plaintiff's evidence. The plaintiffs have not adduced any evidence, therefore, no prejudice will be caused to the defendants. Therefore, the plaintiffs need to be permitted to carry out the proposed consequential amendment. Thus, the application filed by the plaintiffs is liable to be allowed and accordingly I pass following order.

ORDER

1. The application at **Exh.33** is hereby allowed and the plaintiffs are permitted to implead the proposed defendant no.3 in the suit and carry out proposed consequential amendment.
2. The plaintiffs shall carry out amendments on or before the next date from the date of order and provide amended copy of the plaint to the defendants free of Costs.

(Pronounced and dictated in open Court.)

Place : Malvan
Date : 21/03/2024

Mahesh R. Devkate
Civil Judge Jr.Dn., Malvan.