



Order below Exh.44 in
Special Civil Suit No.230/2017
[Ramesh Shaha Vs. Premaji Shaha]

The present suit is filed for partition and separation of shares in the joint family property. The plaintiff and defendant are son and father. Plaintiff alleges that, during the pendency of the present matter, defendant executed a gift deed executed by defendant in favour of his daughter Anita Veera. Therefore, the plaintiff is constrained to file the present application for amendment under Order VI Rule 17 of Code of Civil Procedure.

(2). The said application is strongly resisted by defendant, through his say at Exh.51, on the count that, this Court had held the said suit property as self acquired property of the defendant and on this count his interim application came to be rejected. Therefore, the defendant has got every right to transfer his property and in pursuance to same, a gift deed came to be executed. Moreover, Anita Veera has also filed a Special Civil Suit No.1/2019 for recovery of the possession of the suit property on the basis of gift deed. Apart from it, he further contended that, the present application for amendment will change the nature of the suit by introducing new reliefs as to declaration and cancellation which was not the subject matter of the original suit, hence, on these counts, the application is liable to be rejected.

(3). Heard learned advocate Shri.R.B.Udagave for plaintiff and learned advocate Shri.S.S.Shaha for defendant at length.

(4). Perused application, say and plaint. It is not disputed

that, the suit filed for partition. No doubt, a dispute in respect of the suit property mentioned in the plaint being a self acquired property of defendant or it is a joint family property is there. This being so, during the pendency of the present matter, the defendant has gifted the suit property to his daughter Anita Veera. Under this circumstance, the subsequent event which occurred in respect of suit property is required to be brought on record.

(5). The contention of the defendant that, this Court, while passing an order below Exh.5 that, the suit property is a self acquired property of defendant, is not final but, based on the contentions of the respective parties in their pleadings. The nature of the property will be decided after having full fledged evidence led by the respective parties on this subject, without which, nothing can be said. Therefore, the said contention of the defendant is liable to be discarded.

(6). Apart from it, the defendant also contended that, with this amendment the nature of the suit will be changed from that of a suit for partition, to that of a suit for declaration and cancellation of a gift deed, which was never a subject matter in the original suit. It is pertinent to mention here that, the reliefs of declaration and cancellation are in pursuance to the subsequent event, which took place, by the act of defendant, in respect of the suit property during pendency of the suit. Without seeking these reliefs, the main relief of partition cannot be decided. Therefore, the contention of defendant that, it will change the nature of suit does not hold any order.

(7). Furthermore, the defendant contended that, the proposed amendment will cause an impediment to the progress of the special civil suit no.1/2019 by the proposed party, i.e, Anita Veera for recovery of the possession of the suit property on the basis of gift

deed. The said contention of the defendant can't be accepted and is liable to be turned down.

(8). In view of this, the present application deserves to be allowed. Hence, the following order.

ORDER

- (1). The application at Exh.44 is hereby allowed.
- (2). The plaintiff is hereby directed to carry out the necessary amendment on or before next date and to furnish the amended copy on record.

Sangli
Date:-05/08/2022.

(M.M.Rao)
Civil Judge Sr. Dn., Sangli.

CERTIFICATE

I affirm that, the contents of this P.D.F. file are same,
word to word as per the original order.

Name of Stenographer : G.S.Parve
Court : Civil Judge Sr.Dn., Sangli
Date : 05/08/2022
Order signed by the Presiding : 05/08/2022
Officer on
Order uploaded on : 05/08/2022