

**ORDER BELOW EXH. 72 IN SPL.C.S. NO. 7/2018**  
(Krishnath Mahadeo Patil Vs. Rounak Rajnikant Patil)

1. This is an application under Order 6 Rule 17 read with Order 1 Rule 10 of the Code of Civil Procedure (in short **CPC**).

2. It is submitted that, the plaintiff filed suit for declaration and injunction against sale deed allegedly executed in favour of defendant. The vendor of suit property impersonated herself as Sitabai, thus, the sale deed was executed by imposter. Now the name of said imposter is revealed as Anjali Arun Kulkarni and therefore she needs to be arrayed as defendant No. 2 in the suit. Besides this, the proposed defendant Nos. 3 to 6 helped her to execute said sale deed. Therefore, the proposed defendant Nos. 2 to 6 needs to be added as defendants. Accordingly wherever the word 'defendant' is used, it be replaced with the word 'defendant No. 1'. As the relief in respect of sale deed is sought, pleading is required to be added in the plaint because the relief is based on pleadings and without pleadings evidence cannot be adduced. Therefore, after para 4A, proposed para 4B is required to be added. Apart from it, in para 5 the word 'unknown lady' is used, it be replaced with the word 'defendant No. 2'. The proposed amendments are necessary for final adjudication and also in formal nature which would not affect the basic structure of the suit. With this submission plaintiff prayed to allow the application.

3. Plaintiff has placed reliance on the case of **LIC of India Vs. Sanjeev Builders** reported in **2023 (2) ALL MR 333 (SC)**, wherein it is held that, all amendments to be allowed which are necessary for real

question in controversy.

4. Defendant strongly objected the application by filing his Say below Exh. 73. It is submitted that the application is devoid of merits. The plaintiff is intending to fill up the lacuna and change the nature of suit. Apart from it, the averments made in the application are baseless and false. The proposed amendment in 3A would change the nature of suit. By way of addition of parties the plaintiff is intending not only to fill up the lacuna but also to grab opportunity to lead additional evidence. In fact the names mentioned in the application were revealed to plaintiff in 2014 itself as he had filed complaint bearing RCC No. 234/2014 before Judicial Magistrate, Islampur. The circumstances suggest that plaintiff was aware with these facts prior to filing this suit, therefore, this application needs to be rejected. Moreover, the amendment proposed in para 3C and 3D in the instant application also needs to be rejected, because the application is filed on fictitious grounds. With this submission he prayed to reject the application.

5. Defendants have placed reliance on following citations :

**Gangubai Baban Kadam & Anr. Vs. Vidya Vijay Joshi** reported in **2014 CJ (Bom) 1695**. Before the Hon'ble High Court, the facts of the said case pertain to a post trial amendment under Order 6 Rule 17 of CPC and in that context the fetter on amendment of plaint was considered.

6. **Pallavi Abhijit Mahashabde Vs. Milind Balaji Gandhi & Ors.** reported in **2011 CJ (Bom) 1611** wherein it is held that, the

amendment is not at all necessary for determination real controversy need not to be allowed.

7. **Marcus D'costa Vs. Anand Bhissi Gaonkar & Anr.** reported in **2001 CJ (Bom) 501** wherein it is held that, the relief was sought by proposed amendment, if barred by limitation, in such circumstances amendment cannot be allowed.

8. Present suit is filed for declaration and injunction against the defendant and challenged the sale transaction executed and registered in his favour. Now the plaintiff by way of present application prayed to add additional defendants on the ground that they have executed and registered the sale deed in favour of defendant.

9. Learned advocate for plaintiff argued that, the application would not change the nature of suit. On the other hand the proposed amended pleading would help to decide the fact-in-issue at finality. The application is filed soon after the facts revealed to him. Per contra, learned advocate for defendant argued that the application is barred by amended provisions of Rule 17, Order 6 of CPC as already plaintiff examined two witnesses to support and prove his pleading. Therefore, unless due diligence is shown, the application cannot be taken into consideration. The circumstances suggest that plaintiff was aware with the names of these defendants prior to filing the suit as he had filed one criminal complaint against all these proposed defendants. Nothing is brought on record which precluded from agitating instant relief before this Court prior to commencement of trial. Also, the plaintiff had not pleaded the necessity of addition of

these defendants for final adjudication as no decree can be executed unless they become part of the decree.

10. Heard both sides. Perused record and proceeding. Following points arise for my determination and I record my findings thereon for the reasons below :-

	<u>POINTS</u>	<u>FINDINGS</u>
(1)	Whether plaintiff show sufficient cause to file proposed amendment after cross-examination of plaintiff's witness ?	Negative.
(2)	Whether proposed amendment is necessary for final adjudication of fact-in-issue ?	Negative.
(3)	What order ?	Application is rejected.

**REASONS**

11. As mentioned above, the scope of inquiry of this suit is in respect of declaration against sale deed No. 1360/2012 executed in favour of defendant along with relief of injunction to protect his possession.

**AS TO POINT NO. 1 :-**

12. Before entering into discussion it is just to mention here that, prior to amendment in Rule 17, amendment application can be taken into consideration during trial. However, amendment in 2002 embargo to consider the amendment application once trial commenced, provided that, the party should show the due diligence for filing the application for amendment.

13. In the present suit record clearly depicts that the suit is posted for hearing in view of cross examination of DW-2 was completed in September-2022. Therefore, it is incumbent on the part of the plaintiff to show that in spite of due diligence he could not have filed this application prior to commencement of trial or circumstances alike.

14. On going through the entire application, there is no whisper in the application as to when the names of these proposed defendants revealed to him. On the other hand he specifically pleaded that in RCC No. 232/2014 the plaintiff impleaded the present defendants as well as proposed defendants as accused. Therefore, it is crystal clear that the plaintiff was acquainted with the names of defendant Nos. 3 to 6 prior to filing the suit. Therefore, I arrive at conclusion that plaintiff failed to show due diligence for filing the present application. Accordingly I answer my finding in negative.

**AS TO POINT NO. 2 :-**

15. Another aspect of this application is in respect of addition of parties. The party in whose absence decree cannot be properly implemented is a necessary party. Thus, instant application would have to be considered on the touchstone of Order 1 Rule 10 of CPC as already trial has commenced. Besides the aspect of due diligence, necessity to consider whether right to sue with these proposed defendants is accrued to plaintiff and unless arrayed them as defendants, effective decree cannot be passed and implemented.

16. At the costs of repetition it is necessary to mention here that plaintiff filed suit for declaration against the sale deed executed and

registered in favour of defendant Rounak and to protect his possession. It is contended by the plaintiff that, to execute disputed sale deed vendor impersonated herself as original and true owner, however, she has no concern with the suit property and alleged sale deed. The nature and scope of civil and criminal proceedings and the standard of proof required in both matters is different and distinct. Whereas in civil proceedings the matter is to be decided on the basis of probabilities, the criminal case has to be decided by adopting the standard of proof of 'beyond reasonable doubt'. Thus, the plaintiff has to show probabilities and prove the facts vice versa defendant is under obligation to prove the facts which are in his special knowledge; to have order, as the case may be, in his favour.

17. The plaintiff contending his possession over the suit property and by relying on this possessory right is challenging the correctness of the sale deed before this Court as well as before criminal Court. As mentioned above, the plaintiff to have order in his favour must show right to sue is with him. The plaintiff positively and specifically though asserted his possession, does not speak how the right to sue is available to him against defendant Nos. 2 to 6. Apart from it, the facet for consideration whether proposed defendants are necessary parties to pass and implement the decree, if the sale deed is challenged as null and void as well as bogus. The proposed defendant Nos. 3 to 6 are, as per the submissions of plaintiff, witnesses to the document. Nothing is brought on record that unless those witnesses of disputed sale deed are joined as defendants, the decree cannot be implemented. Besides this, defendant No. 2, as per plaintiff's version, impersonated herself as original owner. The person who committed

act void ab initio, how could be a necessary party to the suit as this is not a criminal trial wherein for the illegal act of the culprit is punished. It is a civil suit wherein rights of litigants are safeguarded, protected and aided to implement those rights. Therefore, I am of view that defendant No. 2 is also not necessary party. The law in respect of amendment is settled in case of LIC of India (cited supra) wherein it is ruled that, the amendment which is required for effective proper adjudication, to avoid multiplicity of litigation, which would not cause prejudice, which would not take away right or defence and not barred by limitation, as well as, would not change the nature of relief filed with bonafides is generally required to be allowed. At the same time in the case of Gangubai (cited supra) it is ruled that, when amendment is context with addition of parties under Order 1, Rule 10 of CPC it is necessary to consider whether proposed party is necessary or not.

**18.** Upon considering the application, I find no shred of reference which could show connection or nexus between proposed amendment and the relief sought in the plaint. For further clarity I specifically mention that the relief is not based on proposed para 4b and therefore it is not the case that unless said pleading is added, the plaintiff is precluded from adducing evidence. However, in the case in hand the plaintiff has not pleaded and shown how the proposed amendment is necessary for determining the real question in controversy, as well as the reasons which suggest that proposed defendants are necessary party. Hence, the proposed amendment is not necessary for final adjudication of fact in issue. Hence, in my humble opinion the ratio laid down in the case of **LIC of india (cited supra)** is not applicable to

the present set of facts. However, the ratio ruled in the case of Gangubai (cited supra) is applicable to the present set of facts as the plaintiff failed to show that unless proposed parties are arrayed as defendant, effective decree cannot be passed and executed. Besides this, after minute reading of the ratio ruled in Pallavi (cited supra) and Marcus (cited supra) it is my humble opinion that those are not applicable to present case. Accordingly I answer my finding in negative.

**AS TO POINT NO. 3 :-**

19. It would not be out of place to mention here that the record of this suit suggests that plaintiff had deliberately concealed the factum of filing of complaint bearing RCC No. 232/2014 against the accused who are proposed defendant Nos. 2 to 6 in this suit. Thus, plaintiff suppressed material facts and has not come to the Court with clean hands; that the plaintiff is intentionally delaying the adjudication of the suit; that the plaintiff has not exercised due diligence; that the amendment is not bonafide and the parties proposed to be joined are not necessary parties, all these aspects are clearly borne out by the record. For the reasons mentioned herein above, in reply to Point No. 3 following order is passed.

**ORDER**

- (1) Application is rejected.
- (2) No order as to costs.

Islampur  
Date : 05/09/2023.

(M.M. Chitale)  
Joint Civil Judge Senior Division,  
Islampur