

ORDER BELOW EXH. NO.138

1} The present application has been filed by the Plaintiff seeking for amendment in the plaint, as contemplated under Order 6 Rule 17 of The Code of Civil procedure, (the “CPC” for brevity).

2} Briefly, it is pleaded that the present suit has been filed for declaration and injunction. Defendant Nos. 14 and 15 executed the registered sale deed in favour of the proposed Defendant Nos. 52 & 53. The Plaintiff came to know about such sale deed on securing the certified copy of same on 08/02/2016. This transaction was not given the effect in the revenue record. Therefore, the Plaintiffs were not aware of the transaction. The Plaintiffs are having title and possession of the subject matter of the sale deed. The proposed Defendant Nos. 52 & 53 were having the knowledge about the title and possession of the Plaintiffs. Therefore, the transaction is not binding upon the Plaintiffs. There is need of amendment in the plaint. Accordingly, the proposed amendment in the plaint in terms of pleadings as well as relief is set out in this application.

3} The reply to this application by Defendant Nos. 1 to 3, 6, 7, 9, 13, 25, 26 is filed on the application itself. The application is opposed. It is contended that the application for amendment is not true and bonafide. The present application has been filed for prolonging the matter. The matter is liable to be rejected. Below Exh. 121 the Plaintiff has preferred the similar application. The contents of this application are not admitted. The Plaintiffs were

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aware of the transaction and the proposed Defendants. However, they did not take the proper steps. The Plaintiffs are negligent. The application is liable to be rejected with costs.

4} The reply of Defendant Nos. 18A to 18D is also filed on this application itself. It is contended that it is their subsequent event, amendment may be allowed. The reply of Defendant Nos. 14, 15, 52 & 53 has been filed on this application not objecting the same.

5} Heard Ld. counsels for the parties.

6} Order 6 Rule 17 of the CPC provides for amendment in the pleadings. The parties may amend their plaint or written statement at any time. The amendment may be allowed where such amendment is necessary for determining the real question of controversy between the parties. The amended CPC requires the amendment in the pleadings has to be before the commencement of the trial unless the party seeking for the amendment has been prevented or has sufficient cause for not preferring the application for the amendment before commencement of trial.

7} In the present case the trial has to be yet commenced. The Plaintiffs are seeking for the amendment in the pleadings in the plaint for execution of one sale deed in favour of the proposed Defendant Nos. 52 & 53. They have filed their no objection. Other defendants have raised objection to the present application on the count that the present application is dilatory tactic on the part of the

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Plaintiffs. They have knowledge about the transaction and the proposed Defendants. It is apt to note that the application is not opposed on the ground that it is not necessary for determining the real question of controversy between the parties. The subject matter of the sale deed is the subject matter of the suit. The sale deed in question appears to have been executed prior to the present suit. Therefore, the proposed amendment as set out in this application is appearing to be necessary for determining the real question of controversy between the parties. Plaintiffs have claimed the knowledge about the alleged transaction on 16/02/2016. The explanation has been given that the Plaintiffs came to know about the disputed transaction on securing the certified copies of the sale deed as the effect of sale deed was not given in the revenue records. Considered this undisputed factum. It appears just and proper to allow the present application as the same may facilitate the complete adjudication of the cause on merits. Accordingly, the order follows in the interest of justice as.....

ORDER

- 1} The application Exh. 138 is hereby allowed subject to the costs of Rs. 500/- to the legal aid.
- 2} The Plaintiff to carry out the necessary amendment as sought for in the plaint within 14 days from today.
- 3} Parties to take note.

Date : 22/02/2018
Pune.

(M.N. Phatangare)
7Th Jt.C.J.S.D., Pune.

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CERTIFICATE

I affirm that the contents of this P.D.F. file Order is same word for word as per original Order.

Name of Steno	:	R.L. Bhunyar (Higher Grade Steno)
Court Name	:	Maneesh N. Phatangare. 7 Th Jt. C.J.S.D., Pune.
Date of Order	:	22/02/2018
Order signed by the Presiding Officer	:	22/02/2018
Order Uploaded on	:	23/02/2018