

Order below Exh.46 in R.C.S.No. 167/2018
(Vilas Kolekar Vs. Krishnabai Jankar)

The suit is filed for perpetual injunction. Plaintiff has filed present application under O.1 R. 10 and O. 6 R. 17 of Civil Procedure Code to implead third party purchaser and of seeking additional relief of declaration in respect of title of plaintiffs over the suit property.

2. Defendants have filed Say at Exh. 54 and strongly objected the application on the ground that they have sold out suit property for their need. Suit property is their ancestral property. Therefore, they were owner and in possession of suit property. Name of purchaser are mutated to the 7x12 extract of suit property. This fact was within knowledge of the plaintiff. Despite of it, plaintiff has filed merely suit for injunction. Now, the proposed amendment will change nature of the suit as it is in respect of additional relief of declaration. Hence, the application is not maintainable. Therefore, application may be rejected.

3. Heard Ld. advocates for both the parties. It is submitted that, merely additional relief of declaration is sought will not bar the amendment of pleading. Apart from it, third party purchaser is necessary party to present suit. Therefore, it is necessary to seek relief of declaration and to implead the third party purchaser as defendant. Per contra defendants reiterated the contentions and objection in their say. Hence, plaintiff is not entitled to seek relief of declaration and to add party.

4. I have gone through the proceeding. It is not in dispute that proposed defendant is subsequent purchaser of the suit property. Apart from it, defendants have denied title of plaintiff over the suit property as it is sold to proposed defendant. Therefore, considering the nature of the suit as it is filed for injunction based on title, it is quite natural that relief of declaration of title

is necessary when it is denied by defendants. As far as adding third party purchaser as a party/defendant to suit, it is pertinent to note here that, the proposed defendant is subsequent owner of the suit property. Therefore, while deciding title of the plaintiff over the suit property he is necessary party, in whose absence effective decree cannot be passed. Therefore, in my view the amendment sought by plaintiff is necessary to decide the real controversy in between the parties.

5. As far as objection raised by defendant that, plaintiff had knowledge about fact despite of it he didn't pleaded it, at the time of filing suit. In my view, it is always open for defendants to contest the suit on this ground by way of cross-examine. Apart from it, the intention of legislation behind introducing the provision of amendment is to avoid multiplicity of proceeding. Therefore, these are aspect of trial and can be decided on merit. Hence, I do not find any substance in objection raised by defendants. Resultantly, application deserves to be granted. Hence the order.

ORDER

1. Application(Exh.46) is allowed.
2. Plaintiff to carry out amendment within the period of 8 days and file amended copy on record.

Tasgaon

(D. A. Darveshi)

Date :14.08.2023

2nd Joint Civil Judge J. D., Tasgaon.